



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, AAT, O

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order, an order compelling the landlord to perform repairs and an order compelling the landlord to allow access to the tenant's guests. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order compelling the landlord to perform repairs?

Is the tenant entitled to an order compelling the landlord to permit her guests access?

Background and Evidence

The parties agreed that on March 21, the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The Notice alleged that the tenant or a person permitted onto the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that since the tenancy began in the summer of 2012, there have been a significant number of complaints from other tenants about noise created by the tenant and other persons in the rental unit. Specifically, the noise complaints included complaints of yelling, swearing, fighting and slamming of doors. The landlord provided a list of dates on which complaints were made by other tenants and also provided a statement from the Kelowna RCMP in which they identified 8 dates, 4 in 2012 and 4 in 2013, on which they attended at the rental unit to address "incidents" which were not described in detail. The landlord testified that tenants reported to her that they had telephoned police and in each case, she investigated to determine the reason why

police were summoned. She testified that on one occasion, the police were telephoned by the occupant of another unit with whom she knew the tenant experienced significant tension, so she did not give that complaint the same weight as others.

The landlord presented evidence showing that she has sent 3 warning letters to the tenant, on August 22, 2012, February 6, 2013 and March 20, 2013, the last warning accompanying the Notice. She testified that she had received a significant number of complaints but had not issued a warning letter after each incident.

The tenant testified that her husband is on probation and is subject to a curfew and that the police often attend either to ensure that he is in the rental unit after curfew or to accompany him to another residence if he and the tenant have fought and he does not wish to stay in the rental unit for the night. The tenant stated that the police have attended the unit much more often than the 8 occasions listed on the RCMP letter in order to attend to curfew related issues. The tenant objected to the landlord having submitted the RCMP letter into evidence as it stated on the letter that it was not to be disseminated without the consent of the originator.

The tenant denied having caused numerous disturbances, although she acknowledged that on March 14 she yelled at police who attempted to force their way into the rental unit. The tenant claimed that the doors in the rental unit did not operate properly and in order to shut them, she had to slam them, which may explain why other tenants heard slamming doors.

The tenant claimed that she spoke with the landlord after the February 6 warning letter was issued and the landlord agreed to withdraw that warning. The landlord testified that she had no recollection of that conversation and does not believe that she would agree to withdraw a warning. She stated that she made no notes of such a conversation although it is her practice to make notes of interactions with tenants.

The tenant pointed out that the police have also attended at the residential property to address issues involving other tenants and that she believes that the landlord erroneously assumes that every time the police are on the property, they are there because of her.

The tenant provided evidence showing that the landlord made her an offer to return part of her rent payment for April if she agreed to mutually agree to end the tenancy on April 30. The tenant stated that she believes that this amounts to bribery and that she is offended that the landlord asked that she make a decision within 3 days on whether to accept the offer. At the hearing I explained to the tenant that parties are always free to

negotiate solutions to issues between them and that they may also impose a time restraint on how long an offer is open.

The tenant did not include in her written claim or evidence any details of her monetary claim or her claim for an order compelling the landlord to perform repairs or grant access to her guests. The tenant explained these claims at the hearing.

Analysis

First addressing the tenant's question regarding the admissibility of the RCMP letter, I can see no reason to find that this evidence is inadmissible. If the landlord has disseminated the letter without the permission of the RCMP, that is a civil matter which the RCMP may pursue as it sees fit. It does not make the letter inadmissible or suspect.

The landlord bears the burden of proving that she has grounds to end the tenancy. Although the tenant claimed that the police were primarily at the unit to address curfew issues with her husband, she also stated that the police attended many more times than the 8 occasions listed in the letter issued by the police station. I find that a reasonable conclusion to draw from this discrepancy is that the RCMP did not report occasions on which they attended the unit when they had not received a complaint. I find it more likely than not that the RCMP attended on those 8 occasions as a direct result of an unrelated third party phoning and requesting their attendance and that the other occasions to which the tenant refers are those instances in which they had to deal with curfew issues.

I accept the landlord's evidence that she received numerous complaints from a number of other tenants and that she investigated each complaint. I find it very persuasive that dates of the complaints made coincide with police attendance and I find that the police attended at the unit because the tenant was causing a disturbance to other tenants.

I find on the balance of probabilities that the landlord has proven that she has grounds to end the tenancy. I therefore dismiss the tenant's claim for an order setting aside the Notice. I find it appropriate to set the end date of the tenancy at May 15, 2013, which is the date which the landlord offered at the hearing.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant did not provide the landlord with advance notice of the rest of her claims. I find that it would be unfair to address those issues when the landlord did not learn the substance of those claims until the hearing. With the exception of the monetary claim, the other issues are moot as the tenancy is ending. I therefore dismiss without leave to reapply the claims for orders compelling the landlord to perform repairs and allow access to the tenant's guests. I dismiss the monetary claim with leave to reapply.

Conclusion

The claim is dismissed with leave to reapply. The landlord is granted an order of possession effective May 15, 2013.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 18, 2013

Residential Tenancy Branch

