



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, LRE, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy, for compensation for damage or loss under the Act, regulations or tenancy agreement, for the Landlord to Comply with the Act, regulations or tenancy agreement, to provide services and facilities as agreed to, to set restrictions on the Landlord's right of entry and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 23, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Are the Tenants entitled to an Order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for loss or damage and if so how much?
4. Has the Landlord complied with the Act, regulations or tenancy agreement?
5. Has the Landlord provided services and facilities agreed to?
6. Should there be restriction on the Landlord's right of entry?

Background and Evidence

This tenancy started on April 1, 2012 as a month to month tenancy. Rent is \$1,600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$800.00 on March 31, 2012.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 19, 2013 by posting it on the door of the Tenants' rental unit. The Effective Vacancy Date on the Notice is September 30, 2013. The Tenant is living in the unit and the Landlord said she wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has seriously jeopardizing health or safety of the landlord or other occupants, jeopardized a lawful right or interest of another occupant or the landlord and significantly interfering with or unreasonably disturbing another tenant or the landlord.

The Landlord said there was one main incident that led to the issuing of the 1 Month Notice to End Tenancy. The Landlord said on August 18, 2013 she had planned to have an open house at the rental unit and the Tenants denied her entry to the unit. The Landlord said the male Tenant was abusive to her and she was afraid for her safety. As a result the Landlord decided to issue a Notice to End Tenancy for Cause.

The Tenant said the Landlord did not give them written Notice to enter the rental unit and did not request their permission to conduct the open house and that is why they denied the Landlord entry on August 18, 2013. The Tenant continued to say that they have co-operated with the Landlord on many occasion before, because they know the Landlord wants to sell the rental unit and they do not want to impede that process. In this situation the Tenant said they felt the number of time the Landlord was showing the unit and because she did not give them written Notice their right were infringed upon and as a result they would not give the Landlord access. The Tenant said they contacted the Residential Tenancy Branch to find out their rights and as a result they have made the following application.

The Tenant said she is requesting the Notice to End Tenancy dated August 19, 2013 be cancelled as she believes the Landlord's reasons are not valid. The Tenant said they did not intimidate the Landlord and they have not jeopardized the Landlords lawful rights.

As well the Tenants have applied for compensation from the Landlord for storage that was not provided but was in the tenancy agreement in the amount of \$1,080.00. The Tenant said they calculated this by putting a value of \$60.00 per month for 18 months that they have lived in the unit.

The Landlord said the Tenants have access to a small 4X4 storage unit on the garage level of the rental complex and they did not want the larger storage unit owned by the strata. The Landlord said she does not understand the Tenants claim for storage facilities because the 4X4 storage comes with the rental unit.

The Tenant said they have no knowledge of the 4X4 storage unit and they were not given a key for any storage unit in the building. The Landlord said she thought she showed the Tenants the 4X4 storage unit and gave them a key at the start of the tenancy. The Tenant said they did not have any knowledge or access to any storage outside of their rental unit. The Tenant continued to say that the Landlord did not mention anything about the 4X4 storage unit in emails between them when the Tenants inquired about storage space.

Further the Tenant said that she is withdrawing their claim for compensation for the time they were put out of their unit so the Landlord could show the property.

The Tenants are also requesting the recover the \$50.00 filing fee for this proceeding.

Further the Tenants said they are requesting that the Landlord provide the storage facilities as indicated in the tenancy agreement and that the Landlord complies with the Act by providing written notice for showings and to restrict the showing to a reasonable number per month, for a reasonable amount of time for each showing and with a reasonable number of people. The Tenants said in their evidence package that the Landlord had requested 8 days of showings for the month of August, 2013. The Tenant said this was excessive and it affected the Tenants quiet enjoyment of the rental unit. The Tenant requested that the Landlord have restrictions placed upon the number of showing allowed per month and that the Landlord be ordered to give the Tenants written Notice for showings or for the Landlord's entry to the unit. The Tenant said she will reply to the Landlord's written Notices by email and she will try to be flexible and reasonable. The Tenant said she is not giving up her right to say no to a showing or entry if she has a valid reason to do so.

The Landlord said she did not know that she had to give the Tenants written Notice to enter the unit and that she had to get the Tenants agreement to show the unit. The Landlord said she understands this now.

In closing the Tenant said she wants to work with the Landlord, but she wants her rights protected as well. The Tenant said she is asking to have the Notice to End the Tenancy cancelled and for the Landlord to comply with the Act, regulations or tenancy agreement.

The Landlord said in closing that she that she wants a positive tenancy and that she truly believes that the 4X4 storage was available to the Tenants from the start of the tenancy.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. Both parties indicated that they did not know their rights and responsibilities prior to this dispute. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date August 19, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated March 12, 2012.

In addition I order the following restriction of the Landlord and the Landlord's opportunity to show the property to potential buyer. The Landlord will give the Tenants written 24 hour Notice for all entries to the rental unit and the Landlord must receive permission from the Tenants for all entries to the rental unit except emergency situations as prescribed by the Act. As well the Landlord is restricted to 2 showings of the rental unit each month with a maximum duration of 2 hours for each showing and with a maximum number of people in the unit of 4 at any one time. If the Landlord exceeds this restriction the Landlord will pay the Tenant \$25.00 for each time the Landlord exceeds the amount of showings or the 2 hour duration. The Tenant is at leave to reapply for additional compensation if the Landlord becomes excessive in the showings. Further the Tenants are ordered to respond to the Landlord's request to enter the unit within 24 hours unless there is extraordinary circumstance.

In addition I accept the Tenants' evidence and testimony that they have not had the use of the 4X4 storage unit that is included in the tenancy agreement. I accept the Tenants do not have a key to the storage unit and the Tenants had no knowledge of the unit even though the Tenants did inquire about storage facilities with the Landlord. Consequently I award \$30.00 per month for 18 months as compensation for the Landlord not providing storage facilities to the Tenants. This is a small space than the space the Strata rents out for \$60.00 per month therefore I find \$30.00 per month is adequate compensation. I award the Tenants \$30.00 X 18 month for a total of \$540.00. Further I order the Landlord to provide the 4X4 storage unit to the Tenants forth with.

As the Tenants have been successful in this matter I order the Tenants to recover the \$50.00 filing fee for this proceeding from the Landlord.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 19, 2013 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

A Monetary Order in the amount of \$590.00 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 01, 2013

Residential Tenancy Branch

