



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, CNC, FF, MNDC, OLC

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause Set aside, a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement, an order to have the landlord conduct emergency repairs for health and safety reasons and an order to have the landlord comply with the Act, regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about July 1, 2013. Rent in the amount of \$2400.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1200.00.

The landlord gave the following testimony:

The landlord stated that the tenant has been a problem tenant virtually since moving in. The landlord stated that the tenant would call the landlord about an issue and then follow up with multiple calls throughout the day to him, his staff and the local city

authorities. The landlord stated that the tenant exaggerates any minor repairs or issues and reports them as emergency situations. The landlord stated that the tenant has caused the owners to incur substantial financial costs due to these “exaggerated emergency calls”. The landlord stated that the tenant has become so problematic to deal with that his own trades people do not wish to enter the unit if the tenant is home. The landlord stated that the two year old furnace is still under warranty but the company will not honour it due to the conduct of the tenant thus causing the landlords additional unnecessary costs. The landlord issued a notice to end tenancy on October 24, 2013 with an effective date of November 30, 2013. The landlord is seeking an order of possession.

The tenant gave the following testimony:

The tenant stated that he disputes the version of events as purported to the landlord. The tenant stated that he had some health concerns due to a “skunk infestation” and a “potential carbon monoxide leak”. The tenant stated that the landlord exaggerated how many times he would call him. The tenant stated he had a very good relationship with all but one person on the landlords’ staff. The tenant is seeking \$854.00 compensation and orders to have the landlord comply with the Act, and to conduct emergency repairs to the furnace as required.

Analysis

Both parties were given full opportunity to present their case and refer to all documentation submitted. This was a highly contentious hearing. The relationship between these two parties is an acrimonious one. The tenant became more agitated as the hearing progressed, especially at the conclusion of it when he wished to continue even after being advised the hearing had come to an end.

When a landlord issues a notice under Section 47 they bear the responsibility of proving their claim. The landlord issued the notice on three separate grounds, one of which was “*the tenant has significantly interfered with or unreasonably disturbed another occupant*”

or landlord.” The tenant gave testimony that there was a skunk infestation but when questioned about the amount of skunks he replied “there was one found dead but there was more”. The tenant constantly referred to a potential carbon monoxide leak that may cause poisoning however the tenant did not provide sufficient evidence to support that claim. The tenant would offer a version of events and then when questioned would offer a different one. I did not find the tenants testimony to be compelling or credible due to its inconsistencies.

The landlord was clear, concise and credible throughout the hearing. The landlord provided multiple receipts and documentation to support his position. The landlord stated that he made every attempt to appease the tenant even if it involved extra costs and the energy of his entire staff, only to be threatened “to be taken to arbitration and I’ll call the city” by the tenant. The landlord stated that the tenant would dictate how the landlord was to do his job and would tell the landlord the deadline for doing such.

The landlord stated that because of the tenants actions they have incurred extra unnecessary costs and the breakdown of relationships with some trades people. The landlord stated that due to the tenant making calls to the city, inspectors, trades people and to himself he would spend an entire day “chasing down” a nonexistent or non emergency issue that could have been taken care of easily and quickly if the tenant would allow the landlord to do his job. The landlord stated that he would spend more time following up on all the people the tenant contacted than the actual work to resolve the issue.

I found the landlord to conduct his business in a timely and reasonable manner that is in accordance with the Act. In the tenants own testimony he stated that the landlord had staff attend in a prompt manner on several occasions. The tenant has made the landlords’ job far more difficult due to his conduct and not allowing the landlord to carry out his daily business. Based on all of the above and on the balance of probabilities I find that the landlord has provided sufficient evidence to prove that the tenant did significantly interfere with or unreasonably disturbed another occupant or the landlord and to have this tenancy end.

The landlord's oral application for an order of possession pursuant to Section 55 of the Act is granted. 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 One Month Notice for Cause dated October 24, 2013 with an effective date of November 30, 2013 remains in full effect and force. The tenancy is terminated.

As I have deemed that the tenancy must end I need not consider the tenants application in terms of emergency repairs or an order to have the landlord comply with the Act and accordingly; I dismiss that portion of the tenants' application.

The tenant is seeking a monetary order for loss of quiet enjoyment in the amount of \$600.00, the cost of installing a one way skunk door of \$204.00 and the recovery of the \$50.00 filing fee.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to satisfy me of grounds #1 and #2 as listed above. As I have stated earlier in this decision, I find that the landlord conducted their business in a timely and reasonable manner. The tenant has not satisfied me of their claim of loss of quiet enjoyment and I therefore dismiss this portion of the tenants' application. In regards to the tenants' claim of the one way skunk door; the landlord was adamantly opposed to

having that installed and was done without the consent of the landlord. The landlord provided several receipts that they were dealing with a professional pest control company and based on the above I dismiss this portion of the tenants' application.

As the tenant has not been successful in their application they must bear the cost of the filing fee.

Conclusion

The landlord is granted an order of possession. The One Month Notice for Cause dated October 24, 2013 with an effective date of November 30, 2013 remains in full effect and force.

The tenants' application is dismissed in its entirety.

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: November 14, 2013

Residential Tenancy Branch

