Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for cause, and for monetary order for compensation for loss or damage under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the outset of the hearing the executor identified that the respondent listed in the tenant's application is not the owner of the property and that the style of cause should be amended to read [estate of landlord's name].

As the responded named in the application is not the owner of the property, I find it is appropriate to amend the style of cause by removing (AF) from the style of cause and adding (The estate of CDF) to reflect the official landlord and owner of the property.

At the outset of the hearing the tenant indicated that they have vacated the rental unit and are no longer seeking to cancel the one month notice to end tenancy, issued on September 11, 2013.

Issue to be Decided

Is the tenant entitled to compensation for loss under the Act?

Background and Evidence

The tenancy began on August, 1, 2011. Rent in the amount of $795.00 was payable on the first of each month. A security deposit of $397.50 and pet damage deposit of $397.50 were paid by the tenant.

The tenant claims as follows:

a.	3 months rent	$2,385.00
b.	Moving costs	$ 336.00
	Total claimed	**$2,721.00**

The tenant testified that her rental unit is located over the top of a garage and during her entire tenancy there have been issued with the obnoxious smells, such as gasoline coming from the vehicles that were being stored in the garage. The tenant stated that landlord has not responded to any of her request regarding safety concerns of the building. The tenant stated that they should be entitled compensated for these issues and compensation for moving costs.

The tenant testified that in the winter of 2012 there was a dune buggy store in the garage that made her rental unit smells of gasoline. The tenant stated she contacted the landlord and the dune buggy was removed, however, shortly after that the landlord then had another vehicle stored for approximately eight months.

The tenant testified that during the tenancy she spoke to the landlord's daughter, however, she never sent any letters of complaints to the landlord except for the letter written on July 31, 2013, as she had been sick for a long period of time. Filed in evidence is a copy of the letter date July 31, 2013.

The tenant stated that she also had contacted the bylaw enforcement office and they came to do an inspection. The tenant stated it was her intent that the bylaw enforcement would order the landlord to make the required repairs; however, the bylaw officer informed her that her suite was unsafe and illegal and that she would have to move.

The executor of the estate testified that the landlord has passed away on January 19, 2013, and the family was grieving. The executor of the estate stated that had the tenant sent a written letter to the landlord, the estate would have received it and would have been able to investigate the situation earlier.

The executor testified that once they received the July 31, 2013, letter that they had hired a contractor to inspect and make the necessary repairs; however that was pointless, as they were served with an official notification from the municipality stated that the suite is not permitted to be used for lodging according to the zoning bylaw. The executor stated they were not give reasonable time to make those repairs before the bylaw department was involved. File in evidence is a letter dated August 2, 2013, from the inspection services division.

Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

The evidence of the tenant was that in the winter of 2012, there was a dune buggy store in the garage that made her rental unit smells of gasoline. The evidence of the executor of the estate was as soon as the landlord was aware of the problem they had the vehicle removed.

The evidence of the tenant was that another vehicle was stored and the smell continued.

The evidence of the tenant was that during the tenancy she spoke to the landlord daughter, however, she never sent any letters of complaints to the landlord except for the letter written on July 31, 2013, as she had been sick for a long period of time. The evidence of the executor was that the landlord had passed away in January 2013, and had the tenant sent a written letter to the landlord address, the estate would have received it and would have been able to resolve any issues earlier. The evidence of the executor was that as soon as they received the July 31, 2013, letter, they had contacted a contractor to inspect and make repairs, however, that was pointless as they received a letter from the municipality stating that the suite is not permitted to be used for lodging according to the zoning bylaw.

In this case, the tenant has not provided any documentary evidence such as letters, dated prior to July 31, 2013, to support that they notified the landlord that a problem existed.

Under Section 7 of the Act, states a party who claims compensation for loss must do whatever is reasonable to minimize the loss. While I accept that the tenant was sick for a portion of this time, the tenant was still required to provide written to notice to the landlord, which would have been received by the estate.

While, I accept that the tenant wrote a letter to the landlord on July 31, 2013, however, the tenant had called the bylaw enforcement department prior to sending the letter, and the landlord was unable to make any repairs, as the bylaw had declared that the land was being use for a manner that contravenes the bylaw.

Upon my review of the inspection services division letter dated August 2, 2013, filed as evidence, I accept the rental unit did not comply with the zoning bylaws and the landlord was given until October 1, 2013, which was a two month grace period to comply with the zoning bylaw.

The tenant writes in the letter of July 31, 2013, that the bylaw officer described the situation as a,

> "nightmare" and said that "if someone light a match, your whole place would go up in flames".
>
> [Reproduced as written]

I find if the rental unit was in such an unsafe manner as describe above, it would have been reasonable for the bylaw department to declare the rental unit uninhabitable and order an immediate cease order, rather than to permit a party to reside in a unit for an additional two month, if there significant noted health and safety issues.

While it is clear the landlord has violated the zoning bylaw, I find in the absent of any further evidence that the tenant has proved insufficient evidence that the unit failed to comply with health, safety and housing standards required by law. As a result, I find the tenants claim for three month rent compensation must be dismissed.

The tenant further seeks to recover the cost of moving. However, under section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

In this case the tenant received a 1 Month Notice to end Tenancy for Cause, as the landlord had received from the municipal government and order to cease using the garage for a residence. I find the tenant was served proper notice to end the tenancy as required by the Act. As a result, I find the tenant has failed to prove a violation of the Act, by the landlord and is not entitled to receive compensation for moving cost.

In light of the above, the tenant's application is dismissed.

Conclusion

The tenant's application is dismissed.

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: December 11, 2013

Residential Tenancy Branch