



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF

Introduction

This hearing dealt with an application by the tenants to cancel a Notice to End Tenancy for Cause and to cancel a Notice to End Tenancy for Landlord's Use. The tenants also apply to be reimbursed for their RTB filing fee.

The tenants and the landlord's son participated in the teleconference hearing and all gave affirmed evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?

Should the Notice to End Tenancy for Landlord's Use be cancelled?

Background and Evidence

The tenants gave evidence that they were personally served with the Notice to End Tenancy for Cause (the "Cause Notice") and the Notice to End Tenancy for Landlord's Use of Property (the "Landlord's Use Notice") on January 1, 2014. The Cause Notice specifies a move-out date of February 1, 2014 and specifies the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk

Issue of Cause:

The landlord gave evidence that the tenants are not, in fact, repeatedly late paying rent and he withdraws that allegation.

The landlord gave evidence that the tenants are running a business from the rental unit. He said the tenants have operated a retail store on the premises and have advertised the address of the rental unit as their business address. The landlord is concerned that the landlord's insurance may be void if a business is being operated on the premises. The landlord's evidence is that the property is worth \$1.5 million, and this could be jeopardized if there is a fire and the landlord's insurer denies coverage.

The landlord also gave evidence that he has cause to end the tenancy because the tenants are engaging in illegal activity by running a business without appropriate City of Vancouver permits.

The landlord provided the following documentary evidence:

1. A copy of a print-out from the City of Vancouver website setting out the requirements for obtaining a home-based business licence. The landlord indicates that the tenants are breaking four of the requirements for obtaining a licence.
2. A letter from GBG Insurance Services Ltd dated January 15, 2014 regarding the rental property address, which reads:

"Dear Client:

As per your inquiry, this is to inform you that above property is insured as basic residential rental property, only for residential purpose. This current policy does not insure the house, if tenant is having business on premises and if any customer get injured at above property.

As landlord, you must inspect your rental property externally and internally regularly to maintain it properly.

So please note that policy is null and void if there is any business activity going on above premises.

Please advise what action has been taken in this regard.

Thank you for your prompt attention to this matter and we look forward to hearing from you soon."

[Signature not legible]

3. A copy of a print-out from the Facebook website which is apparently a page for the tenants' business and which lists the rental unit address. The Facebook page appears to describe the rental unit address as "our showroom".

4. A copy of a print-out from the Allevents website which includes a colour advertisement for what is apparently the tenants' business and which advertises a "Pop-Up Store" from December 6 – 8, 2013 at the rental unit address.
5. A copy of a print-out from the Kijiji website which advertises a clothing sample sale at the address of the rental unit from December 6 – 8, 2013.

The tenant gave evidence that the business has a business licence at her business partner's address. She said they only used the rental unit for a three-day sale event on December 6 – 8, 2013 and only invited friends and family. She said her business partner spoke to someone at the City of Vancouver at the end of November 2013, and she was told they did not require a licence to hold the three-day sale. She said the City's only concern was whether their customers would interfere with neighbours' parking. The tenant said her understanding was that the three-day sale was like a garage sale.

Asked if there were any business activities at the rental unit now, the tenant said there were not. The tenant gave evidence that some inventory from the business remains in the rental unit.

Issue of Landlord's Use:

The landlord gave evidence that the landlord intends to demolish the building containing the rental unit in order to redevelop the site. The landlord provided the following documentary evidence:

- (i) A copy of a letter from the City of Vancouver dated October 7, 2013 regarding the rental unit address. The letter reads, in part:
"On behalf of the Director of Planning, your application has been approved to develop on this site a two-and-a-half storey, two-family dwelling with a detached accessory building (garage) at the rear, providing 2 parking spaces having vehicular access from the lane.
A permit may be issued upon the completion of the revisions and conditions noted below under items 1.0 to 1.7 of this "prior-to permit issuance" letter. ..."
- (ii) A copy of an email dated December 16, 2013 from a City of Vancouver Project Coordinator, Development Services regarding the rental unit address. The email is apparently to the architect and reads "You can go ahead and make application for the BU permit. I have received development approval but am waiting on landscaping approval for the DE."

The landlord gave evidence that he has now applied for a building permit but has not been granted the permit yet. He anticipates obtaining the building permit in late February 2014.

The landlord said he has not yet hired a demolition company, however he anticipates the building would be demolished in the first week of March 2014.

The tenants gave evidence that when the landlord came to collect the rent on December 16, 2013, he told them he now had a permit and needed them to move out at the end of January 2014. The tenants said they telephoned the City of Vancouver to ask whether a building permit had been issued for the rental unit address and were told that no permit had yet been issued.

Issue of Fixed-Term Tenancy:

The landlord also gave evidence that the tenancy agreement signed by the parties on May 16, 2013 is a fixed-term agreement which specifies that the tenancy will end and the tenants must move out on November 15, 2013. The written tenancy agreement shows the landlord's and tenants' initials beside the clause stating the tenancy would end November 15, 2013. The landlord gave evidence that the tenants paid rent on November 15, 2013 but that the landlord accepted rent in error. The landlord's evidence is that the tenants' cheque for December 2013 rent has not yet been cashed.

The tenants gave evidence that they paid rent for December 2013 in cash. The tenants provided a copy of a receipt dated December 16, 2013 for \$1,200.00. The tenants gave evidence that they sent a money order on January 15, 2014 to the landlords for January 2014 rent. The landlord gave evidence that he has not yet deposited the rent for January 15, 2014 to February 14, 2014.

The tenants' evidence is that the landlord told them that their tenancy would continue on a month-to-month basis after November 15, 2013 if the landlord had not obtained a building permit by that date. I accept the tenants' evidence on this point, since it is consistent with the landlord having accepted rent for November 2013 and December 2013. I find that, despite the fixed-term tenancy agreement, the landlord agreed to a continuation of the tenancy after November 15, 2013.

Analysis

Issue of Cause:

Based on the evidence provided by the parties above, I find that the tenants did conduct business activities at the rental unit. At issue is whether those business activities had one or more of the impacts set out in Section 47(1)(d) of the Act:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

The landlord alleges that the business activities were "illegal" because the tenants did not obtain a business licence from the City of Vancouver. This raises the issue of whether Section 47(1)(e) of the Act applies. Section 47(1)(e) reads:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- (i) has caused or is likely to cause damage to the landlord's property,
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord alleges that the business activities caused legal risk for the landlord because the landlord's homeowner insurance policy would not cover injury to the tenants' business customers. The landlord further alleges that the business activities caused legal risk for the landlord in that the landlord's homeowner insurance policy "will be void" and the landlord will not have insurance coverage in case of fire.

Regarding a potential legal risk for the landlord arising from injury to one of the tenants' business customers, my understanding is that the landlord contemplates the potential of an action in negligence. My understanding is that normally a homeowner insurance provider will defend a suit in negligence on behalf of the homeowner. However, an insurer may deny coverage to the homeowner on the basis of a pre-loss breach of condition or breach of another duty by the insured under the policy, such as failure to disclose.

Regarding a potential legal risk for the landlord that may result in the landlord's homeowner insurance policy being "void" in case of fire, my understanding is that the landlord again contemplates a denial of coverage by the insurer based on a failure by the landlord to disclose to the insurer the existence of a business on the premises.

I find that the landlord's concerns about legal risk are well-founded. I note that in *Johnson v AXA Pacific Insurance Co*, [2011] B.C.J. No. 414, the Court found that a landlord's failure to disclose the existence of a business on the premises of a residential rental property constituted a failure to disclose material information to the insurer and the insurer was entitled to void the policy for that reason. The Court noted that it was irrelevant whether the insured's failure to disclose was deliberate, inadvertent, overlooked, or unintended.

Accordingly, I find that the tenants' business activities seriously jeopardized a lawful right or interest of the landlord within the meaning of Section 47(1)(d)(ii). The landlord is therefore entitled to end the tenancy for cause.

I find that the tenants received the Cause Notice on January 1, 2014. The Cause Notice specifies a move-out date of February 1, 2014. However, Section 47(2) states:

(2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Since the tenancy agreement specifies that rent is payable on the 15th of the month, the move-out date is deemed to be February 14, 2014 pursuant to Section 53. **I order that the tenancy will end at 1 p.m. on February 14, 2014.**

Since I find that Section 47(1)(d)(ii) applies, I do not need to consider whether Section 47(1)(e) also applies.

Issue of Landlord's Use:

Based on the landlord's evidence that he does not yet have a building permit, I find that the landlord does not meet the criteria set out in Section 49(6), which reads in part:

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;

Based on the landlord's evidence, I find that the landlord intends in good faith to demolish the rental unit. However, the landlord must have all the necessary permits and approvals required by law at the time the landlord issues a Notice to End Tenancy for Landlord's Use. The Landlord's Use Notice is therefore premature. For that reason, I order that the Landlord's Use Notice is cancelled.

Issue of Fixed-Term Tenancy:

I do not need to address the question of whether the fixed-term tenancy ended on November 15, 2013. However, I find that the tenancy did not end on that date. Based on the tenant's evidence that, at the time the tenancy started, the landlord said the tenancy could continue at the end of the fixed-term if he did not yet have a building permit, and based on the fact that the landlord accepted rent payments for November 15, 2013 and December 15, 2013, I find that despite the written tenancy agreement, the parties agreed that the tenancy would continue on a month-to-month basis.

Since the tenants have been successful in one of their applications, the tenants are entitled to recover half their RTB filing fee which is \$25.00. The tenants may deduct \$25.00 from their rental payment for the period January 15, 2014 to February 14, 2014.

Conclusion

I dismiss the tenants' application to cancel the Notice to End Tenancy for Cause and order that the tenancy will end at 1 p.m. on February 14, 2014. I allow the tenants' application to cancel the Notice to End Tenancy for Landlord's Use and order that the Landlord's Use Notice is cancelled. The tenants may deduct \$25.00 from their rent.

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: January 30, 2014

Residential Tenancy Branch