



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP, PSF, AAT, RR, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order authorizing them to reduce their rent and orders compelling the landlord to perform repairs, provide services or facilities and allow access to the rental unit. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to any of the orders sought?

Background and Evidence

The tenancy began in 2012 and the rental unit is one of 2 in a residential property in which the lower floor is occupied by another tenant. The parties agreed that on November 21, 2013, the tenants received a notice to end tenancy for cause (the “First Notice”) and that on November 27, they received a second notice to end tenancy for cause alleging a different ground to end the tenancy (the “Second Notice”). On November 22, the tenants filed their application for dispute resolution to dispute the First Notice.

The tenants testified that upon receiving the Second Notice, they telephone the Residential Tenancy Branch (the “RTB”) 3 times and each time were advised that they did not need to file an amendment, but could serve it with their evidence 7 days prior to the hearing. On December 20, the tenants filed their evidence at the RTB together with the first page of their application, inscribed with the word “Amended”.

The tenants seek to recover \$100.00 per month for 14 months in compensation for loss of use of part of the rental unit and yard area. The tenants testified that the attic in the rental unit was part of the space they were renting and that the landlord stored

approximately 17 containers in the attic, depriving them of the space they were paying for. They further testified that the landlord left a number of items outside of the unit. The landlord testified that the use of the attic was not discussed at the outset of the tenancy and that permission to use of the attic, which all plank with insulation, was granted after the tenants asked to use the area. The landlord testified that he agreed to remove items from the attic after repeated requests in order to accommodate the tenants, not because they were entitled to use of the space.

Analysis

Section 47(5) of the Act provides that if a tenant does not dispute a notice to end tenancy for cause within 10 days of receiving the notice, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenants acknowledged having received the Second Notice on November 27 and did not file anything with the RTB until December 20. I do not accept that the tenants were told that they did not have to dispute the Second Notice within 10 days of receipt as this is common knowledge among RTB staff and as the notice itself clearly outlines the dispute period. I find that the tenants failed to file their dispute of the Second Notice within the statutorily prescribed timeframe and that they are therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the Second Notice. I therefore dismiss their claim to dispute the Second Notice.

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 tenants must be served with the order of possession, which is effective on January 31, 2014. Should the tenants 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.

As the Second Notice was effective to end the tenancy, it is unnecessary to address the merits of the First Notice.

Turning to the tenants' monetary claim, in order to establish entitlement to compensation, the tenants must prove that they suffered a loss due to the landlord's failure to comply with the tenancy agreement. I am not satisfied on the balance of probabilities that the use of the attic was part of the agreement. Rather, I find that it was a gratuitous gesture on the part of the landlord after the agreement had been entered into and that the tenants cannot therefore receive compensation for loss of that area. I accept that the landlord left items outside the rental unit, but I am not satisfied that the

tenants suffered a loss which is significant enough to attract compensation. I therefore dismiss the monetary claim in its entirety.

As the tenancy is ending, there is no need to address the claims for an order authorizing the tenants to reduce their rent and orders compelling the landlord to perform repairs, provide services or facilities and allow access to the rental unit. Those claims are dismissed.

Conclusion

The tenants' claim is dismissed. The landlord is granted an order of possession effective on January 31, 2014.

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 02, 2014

Residential Tenancy Branch

