



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, FF
CNC, CNR, OLC, PSF, RR, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession for cause / and recovery of the filing fee; and ii) by the tenants for cancellation of a notice to end tenancy for cause / cancellation of a notice to end tenancy for unpaid rent or utilities / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to provide services or facilities required by law / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is the upper portion of a house. The landlord resides in the basement portion of the house. In response to an application by the tenants, a previous hearing was held in a dispute between the parties on January 27, 2014, with a decision issued by that same date (file # 815045). In short, the tenants succeeded in having a 10 day notice to end tenancy for unpaid rent or utilities set aside.

Pursuant to a written tenancy agreement, the fixed term of tenancy is from June 20, 2013 to June 20, 2014. The agreement provides that "the tenancy may continue on a month-to-month basis or another fixed length of time" at the end of the fixed term. Monthly rent of \$1,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$750.00 was collected. A move-in condition inspection report was completed.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 28, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is February 29, 2014, and reasons identified in support of its issuance are as follows:

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

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The landlord also issued a 10 day notice to end tenancy for unpaid rent or utilities, dated February 02, 2014. The tenants filed an application to dispute both of the aforementioned notices on February 04, 2014.

During the hearing the parties undertook to resolve much of their dispute.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to limited resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the tenants will vacate the unit by not later than **Saturday, May 17, 2014**, and that an **order of possession** will be issued in favour of the landlord to that effect;
- that should the tenants find suitable alternate accommodation prior to May 17, 2014, they will undertake to give the landlord **as much notice as possible, in writing**, of their intent to end tenancy;

- that the landlord undertakes not to seek compensation for loss of rental income for any period following the last day of tenancy, should tenancy end prior to May 17, 2014 pursuant to the term of settlement immediately above;
- that the landlord undertakes to text message the tenants when he expects to be away from home for periods of time outside of his usual absence from Monday to Friday / 8:30 a.m. to 5:00 p.m., and when he returns home (in order to assist the tenants in managing the activities of their children);
- that the tenants undertake to limit the noises of daily life emanating from their unit after 9:30 p.m. on all days of the week, but especially from Monday to Friday.

UNRESOLVED ISSUE

The unresolved matter in dispute concerns compensation sought by the tenants arising out of what they claim has been the landlord's failure to make the entire 2 car garage available to them. Presently, ½ the garage is used by the landlord to park his car, while the other ½ is used by the tenants to store certain belongings. The tenancy agreement provides that rent includes "Parking for 2 vehicles." In this regard, the landlord takes the position that ½ the garage is available to the tenants for parking a vehicle if desired, and the tenants use a pad located adjacent to the garage to park their vehicle.

The tenants claim that at the start of tenancy it was their understanding that the landlord would reside in the basement portion of the house for only 2 months, and that following that he would relocate and no longer use ½ the garage for his car. However, the landlord continues to reside in the basement and continues to use ½ the garage for his car. The tenants seek a reduction in rent of \$200.00 per month from the time when tenancy began to the present, for "services or facilities agreed upon but not provided."

Based on the documentary evidence and testimony, I find on a balance of probabilities that the parties had reached an understanding akin to what the tenants have claimed, even while I am also satisfied that parking for 2 vehicles continues to be made available to the tenants. In the result, I find that the tenants have established entitlement to compensation in the limited amount of **\$200.00**. I order that the tenants may withhold this amount from the next regular payment of monthly rent.

As the parties have achieved a settlement of the main aspects of their dispute, the applications to recover the filing fee are both hereby dismissed.

As the end of tenancy nears, the attention of the parties is drawn to the following particular sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **Saturday, May 17, 2014**. This order must be served on the tenants. 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.

I hereby order that the tenants may withhold **\$200.00** from the next regular payment of monthly rent.

The respective applications to recover the filing fee are hereby 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: March 12, 2014

Residential Tenancy Branch

