



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP MNDC OLC PSF RP RR FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenants' application I have determined that I will not deal with all the dispute issues the Tenants have placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the 1 Month Notice to end tenancy. Therefore, I will deal with the Tenants' request to set aside, or cancel the Landlords' Notice to End Tenancy issued for cause; and I dismiss the balance of the Tenants' claim with leave to re-apply.

Introduction

This hearing convened on July 03, 2014 for 40 minutes and was adjourned for substituted service of the Landlord's evidence, as per my Interim Decision dated July 03, 2014. The parties reconvened on July 29, 2014 at 1:00 p.m. for 90 minutes to hear the merits of the Tenant's application to dispute the 1 Month Notice to end tenancy issued for cause.

The parties appeared on July 29, 2014 and affirmed that they understood how this proceeding would be conducted, in accordance with the *Residential Tenancy Branch (RTB)* Rules of Procedure.

Both Landlords and both Tenants appeared and provided oral testimony during the July 3 and July 29, 2014 proceedings. Therefore, for the remainder of this decision, terms or references to the Landlords and Tenants importing the singular shall include the plural and vice versa.

Each party confirmed receipt of evidence served by the other. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued June 5, 2014 be upheld or cancelled?
2. If upheld, did the Landlords attend and make an oral request for an Order of Possession?
3. Should the Landlords be granted an Order for entry of the rental unit and property?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on February 1, 2014. The Tenants are required to pay rent of \$600.00 and on February 1, 2014, the Tenants paid \$300.00 as the security deposit. Both parties affirmed that email was the primary method of communication until sometime around May 13, 2014, when communications broke down and communications between the parties were halted.

The issue in dispute pertains to movement of the Landlords' possessions from the basement to outside in the open carport.

The Landlords submitted a copy of a 1 Month Notice issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
 - Put the Landlord's property at significant risk
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords testified that the Notice was served upon the Tenants on approximately June 5, 2014, by Canada Post, requiring a signature, and by email. In support of the reasons for issuing the Notice the Landlords pointed to their evidence at A9 which included an email sent by the Tenants on January 24, 2014, where they state "I have agreed to rent the house despite you keeping the basement as storage for your personal belongings". The Landlords noted that starting at their evidence A7 are the

emails in chronological order where the Tenants acknowledge that the Landlords' property would be stored in the basement.

The Landlords submitted that as of April 20, 2014 they began to receive emails from the Tenants requesting that the Landlords' possessions be removed from the property by April 30, 2014 and that they later received pictures from the Tenants which displayed the Landlords' possessions stacked up outside in the elements, under a carport. The Landlords argued that they informed the Tenants of their concerns for damage to their property that had been placed outside and requested that the Tenants move the property back into the basement where it had originally been stored.

The Landlords pointed to their evidence at B21 and B23 where they sought guidance from the RTB and issued the Tenants a warning on May 8, 2014, to return their possessions back to the basement. The Landlords noted that that warning outlined that the Tenants could be issued a notice to end tenancy if they Tenants did not correct the situation by moving their possession back into the basement.

The Landlords argued that the Tenants refused to return their possessions back into the basement and they remain outside under the carport to this day. As proof of this statement the Landlords submitted photos at B33 of their evidence, which were taken on May 22, 2014, and they attended the rental property July 27 and July 28, 2014 and physically saw that the possessions were still outside.

The Landlords testified that the Tenants have now refused them access to the rental property to conduct an inspection and to assess what repairs or work is required, despite the Landlords serving the Tenants with advance notice by mail which required a signature and by email. A subsequent notice was posted, or more specifically placed in the Tenants' door on Sunday July 27, 2014, with more specific timelines and reasons for entry, which the Tenants have refused to accept.

The Tenants testified and confirmed that they had sent the emails as provided in the Landlords' evidence at A7 and A9; and noted that there were ongoing statements and questions prior to January 23, 2014, as to when the Landlords' property would be removed.

The Tenants argued that the Landlords had entered into a subsequent agreement whereby the Landlord was to have all of their possessions removed from the property by April 2014. The Tenants confirmed that they did not submit evidence in support of this additional agreement.

The Tenants submitted that they removed only two totes and one bike from the basement, in order to make room for their daughter who was returning to live with them. They argued that the rest of the Landlords' property that is shown in the pictures was always outside and was out there before they took possession of the rental unit. They

stated that since receiving the May 8, 2014, warning, they moved the two totes back inside and left the bike outside as they simply did not have room for the bike.

The Tenants confirmed they have been discussing agreed upon dates and times for the Landlords to access the unit and argued that they have only refused the Landlords access once, and that occurred at 9:10 p.m. last night. They submitted that all other times were being negotiated and simply not mutually agreed upon.

The Landlords submitted that most of their possessions that were previously in the carport that the Tenants spoke about; were removed before the Tenants took possession of the unit. The Landlords compared the Tenants' photo marked 6E taken near the beginning of May 2014 with their photos at B33 from May 22, 2014, and noted that there is no difference in the amount or type of possessions in the carport.

At this point I offered the parties the opportunity to settle these matters. The Tenants were somewhat hesitant in articulating their response. Upon further clarification the Tenants stated that they had made an offer to purchase a property. As the discussion continued the Tenants became more evasive with their responses. The Tenants alleged that they did not know when the subjects were being removed and they did not know what possession date they were negotiating. They argued that they did not know the details because it was a private deal and then stated that it was a rent to own situation. I informed the Tenants that I found their responses had put their credibility at question as it was highly suspect that a person negotiating a purchase of a home, or even a rental agreement, would not know what possession date they were negotiating.

In closing, the Landlords requested an Oral Order granting access to the rental property for the purpose of conducting an inspection and an assessment of the required maintenance or repair work. They also made an oral request for an Order of Possession, if the Notice was upheld.

Before concluding this proceeding I issued the following Order, in accordance with sections 29 and 62 of the Act:

The Landlords are hereby granted an Order of entry, without further notice to the Tenants, of all areas of the rental property, including the interior of the rental house, on July 30, 2014 between the hours of 10:00 a.m. and 2:00 p.m., for the purpose of conducting an inspection and an assessment of the required maintenance or repair work. This Order grants the Landlords the authority to take pictures of any area of the property or house, regardless of if the Tenants' possessions are included in the photos. The Landlords are granted authority to gently move any of the Tenants' possessions in

order to gain access to view any portion of the rental property or house. If, at the time the Landlords attend the rental property (between 10:00 a.m. and 2:00 p.m.), they find the property or house locked, the Landlords are granted the authority to take reasonable measures to gain access to the property and house.

The Tenants were Ordered not to interfere with or restrict the Landlords' access to the rental property and house and were ordered not to interfere with the Landlords' inspection or taking of photos.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

The undisputed evidence was that that the Tenants moved some of the Landlords' possessions outside and the Tenants have failed to return all of those possessions to the basement, despite being issued a warning to comply on May 8, 2014.

After careful consideration of the above, I find the Landlords have satisfied the burden to prove the tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Therefore, I uphold the Notice to End Tenancy based upon this reason and I dismiss the Tenants' application for cancellation of the Notice.

With respect to the landlord's oral request for an Order of Possession, section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the above criteria have been met and I grant the Landlords' request for an Order of Possession effective July 31, 2014, the corrected effective date of the 1 Month Notice, pursuant to section 53 of the Act.

Conclusion

The Landlord has been granted an Order of Possession effective **July 31, 2014, at 1:00 p.m. after service upon the Tenants.** In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

I HEREBY grant the Landlords an Order of entry, without further notice to the Tenants, of all areas of the rental property, including the interior of the rental house, on July 30, 2014, between the hours of 10:00 a.m. and 2:00 p.m., as described above.

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: July 29, 2014

Residential Tenancy Branch

