



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, MNDC, OLC, PSF, RR

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was personally served on the Tenant on August 23, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the tenant was personally served on the landlord on August 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated August 23, 2014 and setting the end of tenancy for October 31, 2014.
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to an order that the landlord comply with the Act, regulation or tenancy agreement by restoring access to a garden area and a workshop and storage areas.
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 15, 2012 when the parties entered into a month to month tenancy in writing. The present rent is \$1250 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$625 at the start of the tenancy.

The rental property is an acreage which has three dwellings. The tenants live in a 4 bedroom house. The landlord and Witness #1 live in a 2 bedroom cottage on the property. A third tenant lives in a one bedroom loft.

Application to Cancel the 2 month Notice to End Tenancy:

Grounds for Termination:

Landlord's notice: landlord's use of property

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord testified that he wishes to regain possession of the rental property in order for him to live in. He is 52 years of age. He has recently received a medical report indicating he may have pancreatic cancer. His family has a history of cancer and dying early in life. He was advised of his medical condition in early August and made the decision to move back home on August 14, 2014. He advised his caretaker (Witness 1) of this decision on August 14, 2014. He testified that he wants a residence where he can have his own bathroom.

The tenants testified the landlord's eviction is retaliatory and that the landlord is not acting in good faith based on the following:

- The landlord has a residence in Vancouver.
- It does not make sense that the landlord would be moving out of Vancouver if he has medical problems.

- There has been a dispute between the parties with respect to the payment of hydro. The tenants have been responsible for paying 88% of the hydro and the remainder comes from the third tenant. The tenants testified this was negotiable and they experienced significant hydro expense. The landlord hired a private contractor to install separate meters. However, on March 15, 2014 the landlord locked the meter box thereby denying the tenants access to view the meter. They testified they served a demand letter on the landlord on August 21, 2014 and the eviction notice was served on August 23, 2014.

The landlord testified the lock was installed because the slamming of the door disturbed the other tenant. He further testified the tenant has access to the meter by asking the landlord or his caretaker to open the door so that they can view the meters. A meter reading was held on October 10, 2014.

After carefully considering all of the evidence I determined the landlord has established sufficient grounds to end the tenancy. I am satisfied that the landlord has a good faith intention to move into the rental unit. It is not surprising that a party might wish to have more privacy given the potential of health issue he is facing. I accept the testimony of the landlord that the decision was made to serve the 2 month Notice to End Tenancy before the tenants' served their demand letter on August 21, 2014.

Determination and Orders

As a result I dismissed the tenant's application to cancel the two month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request

at the hearing. **As a result I granted the landlord an Order for Possession effective October 31, 2014.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Section 51 of the Residential Tenancy Act provides as follows:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
- the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The tenants are entitled to the equivalent of one month rent under section 51(1). The tenants testified the landlord has not cashed their cheque for October. I am assuming the landlord will not be cashing the October rent and is applying this to the right of the tenants under section 51(1). If the cheque is or has been cashed the tenants have the right to make an application under this section. Further, in addition to the rights under section 51(1) of the Act, if the landlord does not comply with what is provided in the 2

month Notice to End Tenancy the tenants have rights under section 51(2) of the Residential Tenancy Act to received the equivalent of 2 months rent.

Tenant's Application for a Monetary Order:

The tenants seek compensation in the sum of \$150 per month for loss of acreage and garden plot for 27 months. The tenant in the loft has used the garden plots for her own use. The tenants testified they were told to stay away from other tenant and as a result they were denied access to the garden plot. The landlord responded saying he was never asked by the tenants nor did he tell the tenants they could not use the garden plots. After hearing the disputed evidence of the parties I determined the tenants failed to prove that the landlord denied them access to the garden plot. The tenants failed to prove they asked the landlord for the use of the garden plot.

Further, section 7(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

If the landlord was refusing access to the garden plot one would have expected that the tenant's would have filed an Application for Dispute Resolution in a timely manner and not wait 27 months before doing so.

The landlord put the hydro meter in the lower area and put a lock on the door. The landlord and the other tenant have a key. The only residents who do not have a key are the tenants. I determined that the landlord has restricted the tenant's access to services or facilities by failing to give the tenants a key. In so doing the tenants' access to a joint storage area was restricted. I do not accept the landlord's submission that all the tenants had to do was request access. This still amounts to a restriction. However, I do

not accept the submission of the tenants they are entitled to \$150 a month. There were other storage and workshop areas on the property which the tenants used. I determined the tenants are entitled to \$75 per month for the period March 15, 2014 to October 31, 2014 for a total of \$562.50 (7.5 months x \$75 = \$562.50)

Conclusion

I ordered the landlord(s) to pay to the tenants the sum of \$562.50 plus the sum of \$50 in respect of the filing fee (reduced to show the limited success of the Tenants) for a total of \$612.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

I dismissed all remaining claims brought by the tenants as the tenancy will be coming to an end at the end of October.

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: October 21, 2014

Residential Tenancy Branch

