



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNDC FF DRI CNC MNDC OLC PSF LRE LAT RR

Introduction

This hearing dealt with applications by the landlord and the tenant. Both parties participated in the teleconference hearing.

At the outset of the hearing I informed the parties that the issue of the notice to end tenancy took precedence, and after dealing with a preliminary issue of jurisdiction, I only heard evidence on the issue of the notice to end tenancy. I will address the remainder of the applications in the conclusion of my decision.

The tenant stated that he did not receive all pages of the landlord's evidence. Two of those pages were identified as "Appendix 4" and "Appendix 5." The remaining pages that the tenant did not have were the back pages of all double-sided pages submitted to the Residential Tenancy Branch. I did not admit those pages as evidence. The landlord gave testimony that addressed the information contained on those pages. I have reviewed all testimony and other admissible evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Jurisdiction

Under section 4 of the Act, I do not have jurisdiction to consider disputes where the tenant shares a bathroom or kitchen facilities with the owner of the rental unit. In this case the tenant's evidence indicated that the landlord did not reside in the rental unit, while the landlord's evidence indicated that he did. I therefore found it necessary to hear evidence and determine whether I had jurisdiction to hear this matter.

The tenant stated that when he viewed the rental unit, a two-bedroom condo in a strata building, the landlord told the tenant that he was living at his girlfriend's. The tenant submitted a copy of a Shelter Information form signed by the landlord which indicated that the landlord's address was the landlord's girlfriend's address. The tenant stated that

the landlord gave the tenant the choice of which bedroom, and said that the other bedroom was going to be occupied by a female university student. The tenant stated that the landlord told the tenant "the place is yours until the other tenant moves in." The tenant stated that the only personal items of the landlord were camping equipment that the landlord was going to move into storage. The tenant stated that the landlord only came to the rental unit three times, and he emailed or texted first, came to pick up items such as tools, and stayed for only 10 minutes. The tenant stated that when the female university student's plans changed and she was not going to move in, the landlord asked the tenant to find another tenant for the second bedroom, a female so that the two tenants would look like a couple and the landlord could appear to be complying with strata rules.

The landlord stated that he was eating and sleeping at his girlfriend's, but he had all of his stuff at the unit. The landlord stated that he believed that he and the tenant were roommates. The landlord acknowledged that he was thinking of renting out the second bedroom. The landlord stated that because of conflict that arose between him and the tenant, on August 4, 2014 the landlord moved out of the unit and into his girlfriend's. The landlord stated that his girlfriend's rent was increased at that time because there was now an additional occupant. The landlord stated that he put his girlfriend's address on the Shelter Information document because the tenant said he needed it for work and would be able to get back his security deposit.

I determined, based on the above-noted evidence, that the landlord did not share a bathroom or kitchen facilities with the tenant, and I therefore have jurisdiction to hear this matter. I find the tenant's evidence more credible and likely than that of the landlord. The landlord signed a legal document attesting that he resided not at the rental unit but at his girlfriend's address. I find it more likely than not that the landlord was merely attempting to circumvent strata rules regarding tenancies, and he did not reside in the unit at any time since the outset of the tenancy.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on August 1, 2014. On September 23, 2014 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

Landlord's Evidence

The landlord stated that in September 2014 the strata council gave the landlord letters regarding the tenant's actions and behaviour toward other occupants in the building. There were multiple concerns regarding the tenant smoking pot, playing music loudly, acting aggressively toward other occupants and the landlord, and on one occasion refusing to give fire fighters access to the rental unit. The landlord stated that they spoke to two other occupants in the building, who said they were fearful for their safety because of the tenant's behaviour toward them. The landlord submitted a letter from the strata council dated October 30, 2014 and an anonymous, heavily redacted statement from one other occupant of the building dated September 22, 2014. The landlord acknowledged that they did not submit the other three letters from other occupants, because they didn't think they'd need that much evidence.

The landlord stated that the tenant sent the landlord multiple threatening emails and text messages, including a threat to report to the landlord's employer that the landlord smoked pot, so that the landlord would lose his job with the air force. The landlord stated that in fact his employer did investigate him and he was cleared. The landlord stated that the tenant took some of the landlord's belongings and locked them in a room so the landlord could not access them. The landlord stated that on one occasion the tenant was standing in the hallway outside the rental unit and yelling at the landlord. The landlord stated that they received information from Telus that the tenant had broken copyright law while using an account under the landlord's name.

Tenant's Response

The tenant stated that he had no knowledge that he had disturbed any other occupants in the building, and the landlord did not notify the tenant about any disturbances before issuing the notice to end tenancy. The tenant submitted that the anonymous complaint letter could have been written by anyone, even the landlord. The tenant acknowledged that he does use medicinal marijuana, but he mostly eats it. The tenant stated that the landlord advised the tenant to smoke in an area set aside in the parking lot, where the tenant has seen up to ten other occupants of the building who also smoke medicinal marijuana. The tenant stated that he did not deny entry to the fireman and the strata president, but he asked them to leave after they came into the unit and saw what they wanted to see.

The tenant denied significantly interfering with or unreasonably disturbing the landlord. The tenant stated that he has seen the landlord less than five times, and he was pleasant until the landlord wanted to raise the rent.

Analysis

It is clear that the relationship between the landlord and the tenant is acrimonious, and there is some evidence to suggest that the tenant has disturbed other occupants in the building. However, the landlord has failed to provide sufficient evidence to support the notice to end tenancy.

The letter from the strata council is dated October 30, 2014, more than one month after the landlord issued the notice to end tenancy, and it does not refer to specific dates of any alleged incidents, aside from an allegation that the tenant damaged common property on September 21, 2014. I therefore find the strata council's letter fails to support the allegation that the tenant unreasonably disturbed or significantly interfered with other occupants at the time the notice was issued.

The anonymous complaint letter dated September 22, 2014 is also of little evidentiary value. Because the landlord did not call the author of the letter as a witness, the tenant could not ask questions of that person, and therefore could not fully defend himself against the allegation.

The landlord did not provide in evidence copies of any of the threatening texts or emails sent by the tenant to the landlord. It appears that much of the acrimony between the landlord and the tenant was a result of the landlord's misunderstanding of the nature of the tenancy and his attempts to act contrary to the *Residential Tenancy Act*.

For these reasons, I cancel the notice to end tenancy for cause.

I note that as I have determined that there is a tenancy between the parties that is governed by the Act, the tenant has exclusive occupation of all portions of the rental unit established in the tenancy agreement. The landlord may not avoid or circumvent the Act simply by moving back into the rental unit.

As the landlord's application for an order of possession was unsuccessful, he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The notice to end tenancy dated September 23, 2014 is cancelled, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

Aside from the landlord's claim for recovery of the filing fee, which is dismissed without leave to reapply, the landlord's monetary claim and all other portions of the tenant's claim are dismissed with leave to reapply.

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: November 14, 2014

Residential Tenancy Branch

