



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: OPC

Tenants: CNC, CNR, OLC, ERP, FF, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession. The tenants sought to cancel two notices to end tenancy and an order for emergency repairs.

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

At the outset of the hearing the landlord submitted that he did not receive the tenants' evidence a full 14 days prior to the hearing but rather only 13 days from their Application and only 7 days for evidence in response to the landlord's Application. The landlord testified that despite this he was prepared to address the evidence, as such, I find there is no prejudice attached to the late evidence and the hearing proceeded.

Residential Tenancy Branch Rule of Procedure 2.3 states that an Arbitrator may dismiss unrelated disputes that are contained in a single application. As the tenants have applied to cancel two notices to end tenancy and an order to have the landlord complete emergency repairs and definition of use of the garage, I find that the additional orders sought by the tenants are unrelated to the issue of the notice to end tenancy.

As such, I dismiss the portion of the tenants' Application seeking orders for emergency repairs, with leave to reapply at a future date. However, after hearing testimony from both parties I find that it is necessary to determine whether or not the tenants are entitled to exclusive use the garage.

At the outset of the hearing I also confirmed with both parties that rent that was subject to the 10 Day Notice to End Tenancy for Unpaid Rent that the tenants' sought to cancel had been paid within 5 days of receiving the 10 Day Notice and as such the notice was cancelled at that time. I therefore found this issue to be moot and amended the tenants' Application to exclude this matter.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act (Act)*.

It must also be decided whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agree that the tenancy began on March 1, 2013 for a monthly rent of \$2,100.00 due on the 1st of each month and a security deposit of \$1,050.00 was paid. The parties both acknowledge that there is no written tenancy agreement and as a result there are disputed terms of the agreement.

Of particular significance to this hearing is the use of the garage. While the parties agree that it is a two car garage the landlord asserts that the tenancy agreement only allows the tenants one of the stalls and the tenants assert the agreement included both stalls.

The parties also agree that currently and at the time the tenancy agreement was entered into the only access to the separate basement rental unit was through the garage. The parties acknowledge that there is a location at the back of the house where there used to be stairs down to the patio outside of the basement unit but the stairs had been removed.

The landlords provided a copy of a 1 Month Notice to End Tenancy for Cause issued on September 26, 2014 with an effective vacancy date of October 30, 2014 citing the tenants have allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenants have engaged in an illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord; the tenants have assigned or sublet the rental unit without landlord's written consent.

The landlord submits that the tenant had, unbeknownst to the landlord, allowed a relative of theirs to move into the basement rental unit and just started giving the landlord \$500.00 extra per month. The parties agreed that this relative stayed in the basement rental unit from January to June 2014.

The landlord submits that this constitutes subletting without the landlord's written consent and allowing an unreasonable number of occupants.

The landlord also submits that the tenants have been operating a business of the rental unit which is illegal and as such they have conducted an illegal activity. The landlord has provided no law or by-law that has been contravened. The landlord submits that as a result of this activity the tenants have filled the whole garage up with supplies which impact the landlord's and potential tenant's access to the basement rental unit.

The tenants submit that they have a cleaning business for which they have an office off-site of their residence and that they only store supplies in the garage.

The landlord submits that because the tenants continue to use the full garage that they are interfering with the landlord's ability to rent out the basement unit. The tenants submit that when they entered into the tenancy agreement they were told the tenancy included the entire garage and that the landlord was going to build new stairs to the back entrance of the basement rental unit.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) There are an unreasonable number of occupants in a rental unit;
- b) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- d) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34.

From the testimony of both parties I find that because the landlord accepted additional rent monies from the tenants during the time that their relative was staying with them the landlord cannot now – several months after the relative has moved out – use this as a cause to end the tenancy. I find the landlord accepted the subletting and the number of occupants when they accepted the rent.

As to the landlord's assertion of illegal activity, I find the landlord has presented absolutely no evidence that operating a business out of a rental home is contrary to any legislation or local bylaws.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In the case before the parties have a basic dispute over the terms of the tenancy agreement because there is no written tenancy agreement. The tenants assert they were told they had exclusive use of the garage. The landlord asserts that the tenants were only provided with one stall in the garage.

Based on the testimony of both parties that the only access to the rental unit, at the time the tenancy agreement was entered into and now, is through the garage, I find, on a balance of probabilities, that the landlord would never have entered into an agreement that gave away that access by giving the tenants exclusive use of the garage.

As such, I find that by the tenants continued refusal to use only one side of the garage they have significantly interfered with the landlords' ability to rent the basement rental unit and as a result the landlord has sufficient cause to end the tenancy.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 21, 2014

Residential Tenancy Branch

