



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; MNDC; OLC; RR; FF

Introduction

This is the Tenants' application to cancel a *One Month Notice to End Tenancy for Cause* issued August 15, 2014 (the Notice); for compensation for damage or loss under the Act, regulation or tenancy agreement; for an order that the Landlord comply with the Act, regulation or tenancy agreement; for a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The Tenants' application was scheduled to be heard on October 17, 2014. Both parties signed into the Hearing. The Hearing process was explained and the participants were asked if they had any questions.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenants mailed the Landlord the Notice of Hearing documents, by registered mail, sent on August 18, 2014. The Tenants also served the Landlord with copies of their documentary evidence by registered mail, sent on September 24, 2014.

The Landlord provided the Residential Tenancy Branch with 50 pages of documentary evidence at 9:00 a.m. on October 10, 2014. She testified that she served the Tenants with copies of her documentary evidence by taping the documents to the Tenants' door at 9:00 p.m. on October 10, 2014. The Tenants acknowledged receipt of the Landlord's documentary evidence.

Due to technical difficulties with the Branch's fax machine and scanner, I did not receive the Landlord's evidence package in time for the Hearing on October 17, 2014. Therefore, I adjourned the Tenants' application to October 31, 2014, at 1:30 p.m. and provided both parties with the sign-in information during the Hearing.

The matter was reconvened on October 31, 2014, with both parties present.

The Landlord's documentary evidence included a one page document entitled "A Letter Only for Arbitrator". The Landlord confirmed that she did not provide a copy of this document to the Tenants and therefore it was not considered.

Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue to be Decided

- Should the Notice be cancelled?
- Are the Tenants entitled to a monetary award for loss of peaceful enjoyment of the rental unit?
- Are the Tenants entitled to a rent reduction for facilities or services agreed upon but not provided?
- Should the Landlord be ordered to comply with the Act?

Background and Evidence

The Tenants live in the downstairs suite of the rental property. The Landlord lives in the upper suite.

The parties made reference to previous Hearing on July 24, 2014, which was reconvened on July 30, 2014 (the "Previous Hearing"). The Previous Hearing dealt with the Tenants' application to cancel a One Month Notice to End Tenancy for Cause that was issued June 13, 2014, along with various other Orders and a request for financial compensation. On August 13, 2014, a Decision was rendered on the Previous Hearing. The arbitrator canceled the Notice to End Tenancy; the Landlord was ordered to have a wall repaired by a qualified contractor, such repair to commence by December 1, 2014; and a monetary award in the amount of \$3,854.87 was granted to the Tenants, to be deducted from rent until paid in full. This monetary award was for the Tenants' out of pocket expenses as a result of a flood at the rental unit, loss of use of the rental unit, putting up and taking down plastic sheeting, and recovery of their filing fee.

On August 15, 2014, the Landlord issued another One Month Notice to End Tenancy for Cause for the same reasons as indicated on the Notice to End Tenancy issued July 30, 2014.

On September 8, 2014, the Landlord made an Application for Review Consideration of the August 13, 2014 Decision. The Landlord's Review Application was dismissed and the Decision made August 13, 2014, was confirmed.

The Landlord gave the following testimony:

The Landlord testified that the Tenants fought "all the time" and that the police were called to the rental property 3 or 4 times a month. The Landlord testified that between July 30 and August 15, 2014, the Landlord called the police "2 or 3 times" because of the Tenant's fighting.

The Landlord stated that the female Tenant called her a [expletive] bitch and that the male Tenant was a bully. The Landlord provided a photograph of the female Tenant's car in evidence. The Landlord testified that the photograph was proof that the male Tenant is a bully,

because it has a “disable card” hanging in the window, which indicates that the female Tenant is a “disabled person who is dominated by” the male Tenant.

The Landlord stated that the Tenants tried to frighten her little girl by putting skeletons and ghosts in the yard. The Landlord provided a photograph in evidence.

The Landlord testified that the male Tenant “threw his dog shit on my deck where I have my dinners summertime”. She stated that the male Tenant also threw maggots on her deck. The Landlord provided a photograph of (what appears to be) two small animal turds on a balcony surface.

The Landlord testified that the Tenants left bags of garbage in the yard and that the male Tenant “hides water hose behind the house side hall way door to trip me over”. Photographs of garbage and a water hose were provided in evidence.

The Landlord testified that the female Tenant ripped the Landlord’s mailbox off the side of her house, breaking the mailbox.

The Landlord stated that the Tenants were also evicted by their previous landlord.

The Tenants gave the following testimony:

In answer to the Landlord’s testimony, the Tenants stated that the Landlord has fabricated all of the evidence. The Tenants submitted the following answers to the Landlord’s statements:

1. The Tenants denied that they were constantly fighting and said that the police were called because of the Landlord’s actions. The Tenants testified that the Landlord has been criminally charged with uttering threats and that she was arrested “on Friday” for not appearing in Court. The Tenants stated that she will have her first appearance on November 12, 2014.
2. The Tenants stated that they put up Hallowe’en decorations “two weeks ago” and that they were not attempting to frighten the Landlord’s daughter.
3. The Tenants denied putting dog feces or maggots on the Landlord’s balcony/deck. They testified that the Landlord’s balcony/deck is 13 feet off the ground and has a 5 foot glass guard rail surrounding it. The Tenants submitted that it would be very difficult to throw an object from below and on to the Landlord’s deck so that it would land in the spot pictured in the photograph, or that it would land so neatly side-by-side.
4. The Tenants stated that they share a mail box with the Landlord and that it the two screws securing it to the wall were loose. They testified that the mail box simply fell off the wall because the screws eventually worked their way off the wall.
5. The Tenants stated that they moved out of their last home because they were given a Two Month Notice to End Tenancy for Landlord’s Use.

The Tenants submitted that the Landlord is harassing them by issuing bogus Notices to End Tenancy and interfering with their peaceful enjoyment. They stated that the Landlord has not begun to make the repairs that were ordered on August 13, 2014, and that the Landlord told the arbitrator at the Previous Hearing, "I'll fix that wall when I evict them."

The Tenants stated that eventually the Landlord will "win" because they can't stand to live there anymore. The Tenants testified that they are attempting to find alternate accommodation and were almost successful in doing so for November 1, 2014. The Tenants testified that they are continuing their search.

The Tenants seek compensation for loss of peaceful enjoyment in the amount of \$4,700.00, which is the equivalent of two months' rent.

The Landlord gave the following statement:

The Landlord acknowledged that she was charged with uttering threats against the Tenants and that she was released on an Undertaking to Appear in Court on November 12, 2014.

Analysis

The Notice indicates the following reasons for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord's property at significant risk.

In this case, I find that the Landlord has not provided sufficient evidence to support the Notice. The Landlord agreed that she has been charged with harassment. I accept the Tenants' testimony that the ghosts and skeletons are merely Hallowe'en decorations and were not put up to frighten the Landlord's daughter. I also accept the Tenants' submission with respect to the animal turds. I find that the Landlord's photograph bears out the Tenants' submission that it would be very difficult to throw turds 18 feet in the air and have them land so close to the balcony railing and side by side.

Therefore, **I find that the Notice is not a valid notice to end the tenancy and it is canceled.**

Based on the testimony of both parties, and on the balance of probabilities, I find that the Landlord has not complied with Section 28 of the Act. Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that, by her own actions, the Landlord has not protected the Tenants' right to freedom from unreasonable disturbance. However, I find the Tenants' monetary claim to be excessive. Pursuant to the provisions of Section 67 of the Act, I allow this portion of the Tenants' claim in the amount of **\$1,175.00**. The Tenants have indicated that they intend to move out of the rental unit as soon as they can and therefore, rather than allow them to deduct this amount from a future month's rent, I hereby provide the Tenants with a Monetary Order.

I order the Landlord to comply with Section 28 of the Act for the remainder of the tenancy.

I remind the Landlord that she is still required to comply with the repair order contained in the Decision of August 13, 2014:

"The landlord admitted that further repairs are required to the wall in the wine room. The landlord is ordered to have all of the water damage in this wall remediated by a qualified contractor. I recognize that contractors may be busy at this time of year and it may take a little while before a suitable contractor is able to start work. If work has not commenced by December 1, 2014, the tenants may apply to the Residential Tenancy Branch for a further order."

I find that the Tenants' request for a reduction in rent for repairs is premature as it is not yet December 1, 2014. This portion of their application is dismissed with leave to reapply.

The Tenants' application had merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

The Notice to End Tenancy issued August 15, 2014, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I hereby grant the Tenants a Monetary Order in the amount of **\$1,225.00** for service upon the Landlord. This represents a monetary award for loss of peaceful enjoyment of the rental unit and recovery of the filing fee. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The Landlord is ordered to comply with Section 28 of the Act.

The Tenant's application for a rent reduction for the as-yet-to-be-completed repairs is premature and is **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 19, 2014

Residential Tenancy Branch

