



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC & FF

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 one month Notice to End Tenancy was personally served on the Tenants on October 30, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficiently served on the other.

The tenant RLL vacated the rental unit prior to the end of November. RLL is not an co-applicant in the application filed by TWA and has not made a claim for compensation. .

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant TWA is entitled to an order cancelling the one month Notice to End Tenancy dated October 30, 2014?
- b. Whether the tenant TWA is entitled to a monetary order and if so how much?
- c. Whether the tenant TWA is entitled to an order authorizing the changing of the locks?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord rented the rental property from a third party. It was intended that the tenants would work for him as part of his business. However, the business did not proceed as planned.

The landlord testified he rented rooms to the tenants at \$500 each. There were also a number of vacant rooms. The landlord testified that it was always his intention to move into the rental property. However, he did not live there although he did keep some birds. The tenants testified the landlord did not live there although they acknowledge the landlord was going to use one of the rooms as an office.

The tenant RLL vacated the rental unit at the end of November. The tenant TWA testified he is in the process of moving out although some of his belongings still remain.

Tenant's Application for an Order for Possession:

I dismissed the tenant's application for an order to cancel the one month Notice to End Tenancy as that issue is moot. Both tenants have stated they have either moved out or in the process of moving out. Further, I dismissed the tenant's application for an order authorizing the changing of the locks as the tenancy has come to an end.

Landlord's Application for an Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant's application to cancel the Notice to End Tenancy has been dismissed. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Accordingly, I granted the landlord an Order for Possession on 2 days notice. The tenant RLL moved out in accordance with the Notice to End Tenancy and as a result I dismissed the landlord's claim for the cost of the filing fee against RLL. However, TWA did not move out at the end of the tenancy date set out in the Notice to End Tenancy. I ordered that TWA pay to the landlord the sum of \$50 for the cost of the filing fee as the landlord acted reasonably in filing the Application for Dispute Resolution. .

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.

Tenant TWA claim for a monetary order:

The tenant TWA seeks a monetary order in the sum of \$500 based on the following:

- The landlord on a regular basis since September entered the rental property without giving notice
- The landlord failed to properly take care of his bird.
- The landlord from time to time removed the tenant's belongings
- The police have been called on three separate occasions.
- The landlord threatened him.

The landlord opposed the tenant's claim on the basis that

- The tenant's were hindering his access to the rental property
- The tenants did not have possession of the common areas such as the living room, kitchen etc. and he had the right to throw out the tenant's belongings.
- That all times he intended to move into the rental property and use a portion for himself.

Analysis:

The tenancy agreement is not in writing. The Residential Tenancy Act imposes an obligation on the landlord to ensure the tenancy agreement is in writing. Based on the evidence presented I determined the agreement was that each tenant had exclusive possession of their room and shared possession of the common area such as the living room and kitchen. I further determined that at all material times it was agreed that the landlord was going to use at least one of the rooms in the rental unit. Thus the landlord had the right to access the common areas as well as the room he had his bird in.

However, I determined the tenant TWA is entitled to compensation for the breach of the covenant of quiet enjoyment by the landlord as follows:

- From time to time the landlord removed the tenant's belongings found in the common area.
- The landlord would enter the tenant's rooms without knocking and without permission. I do not accept the landlord's submission that he was entitled to do this in order to get the tenants up for work.
- The landlord failed to take proper care of his birds thus disturbing the tenant.

In the circumstances I determined the tenant TWA is entitled to compensation in the sum of \$200 for the reduced value of the tenancy caused by the landlord's breach of the covenant of quiet enjoyment.

Summary:

I ordered that the landlord pay to the tenant TWA the sum of \$200. I ordered that the tenant TWA pay to the landlord \$50. After setting off one claim against that of the other I ordered the landlord pay to the tenant TWA the sum of \$150.

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.

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: December 09, 2014

Residential Tenancy Branch

