



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, CNC, ERP, LAT, MNDC, MT, OLC, 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 one month Notice to End Tenancy was personally served on the Tenant on January 3, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant on January 21, 2015. Further, I find that the Application for Dispute Resolution filed by the tenant was personally served on the landlord on January 22, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy dated January 3, 2015 and setting the end of tenancy for February 28, 2015?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to an order for emergency repairs?
- d. Whether the tenant is entitled to an order authorized the tenant to change the locks to the rental unit?

- e. Whether the tenant is entitled to an order allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?
- f. Whether the landlord is entitled to an Order for Possession?
- g. Whether the landlord is entitled to A Monetary Order and if so how much?
- h. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a tenancy agreement that provided that the tenancy would start on November 16, 2014 and continue on a month to month basis. The tenant has exclusive use of his bedroom and he shared the use of the bathroom, kitchen and living room with two other tenants. He pays a rent of \$380 per month payable in advance on the last day of the month. The tenant paid a security deposit of \$190.

Tenant's Application to Cancel the one Month Notice to End Tenancy:

The landlord personally served the one month Notice to End Tenancy on the Tenant on January 3, 2015. The Notice provides that if the tenant wishes to dispute the Notice he must do so within 10 days after receiving it. It further states the Dispute Resolution officer may extend your time to file an Application but only if the dispute resolution officer accepts the tenant's proof that he had a serious and compelling reason for not filing the Application on time. The tenant did not file an Application for Dispute Resolution until January 22, 2015. The tenant failed to present sufficient reason for not filing within that 10 day period. On that basis alone the tenant's application should be dismissed.

I determined it was appropriate to consider the tenant's application on the merits. The Notice to End Tenancy relies on the following grounds

- 47(d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

:

Briefly, the landlord relies on the following evidence to end the tenancy:

- The tenant has caused severe disturbances that has significantly interfered with and unreasonably disturbed the other tenants in the rental unit. One tenant, Witness 1 sleeps in a camper because he feels uncomfortable about the tenant's conduct. The second tenant, Witness 2 moved from the rental unit in early January because of threats.
- The noise disturbance caused by the tenant had significantly disturbed the landlord, their 6 year old son and infant. On January 3, 2015 the tenant banged on the front door at about 2:00 a.m. A short time later he forced open the door to the room of Witness 2 causing significant damage. The landlord produced a quotation that indicates it will cost \$275 to repair the door and door frame.
- The conduct of the tenant in threatening Witness 2 caused Witness 2 to leave the rental unit. His January rent was returned. The landlord lost rent for the month of January.
- The landlord testified that on January 1, 2015 Witness 1 told him "he could not live under the same roof with a mental patient" and that he intended to leave at

the end of January. Witness 1 left the next day after the incident that occurred that night.

- On January 2, 2015 the landlord testified Witness 2 told him to call 911 because the tenant had threatened his life. The landlord testified Witness 2 gave him text messages about the threats.
- The police came about 5:00 a.m. on January 3, 2015. The door to Witness 2 room was broken. The landlord submits that the tenant damaged the door. Witness 1 and Witness 2 were not home at the time.
- The landlord gave first hand testimony of the disturbances caused by the tenant in the early morning hours of January 3, 2015 and how it affected his family.
- Witness 2 testified that he never smoked in the suite and he felt uncomfortable sleeping in the rental unit because of the conduct of the tenant. He would often sleep in his camper.
- Witness 1 testified as to the threats and the noise coming from the tenant. He testified he never smoked in the rental unit. He testified the rental unit was not a peaceful place as over the last month he experienced significant disturbances of the tenant speaking through he walls.

The tenant disputes much of the landlord's evidence. In particular the tenant testified as follows:

- Prior to renting the rental unit he was assured by the landlord it was a non smoking unit. He has serious health problems and Witness 1 and 2 smoked in the rental unit which caused him significant discomfort.
- He testified that Witness 2 threatened him. He is a stroke survivor and he would never enter into a physical altercation as it would put his life at significant risk.
- He denied causing damage to the door. He testified the landlord failed to conduct a condition inspection at the start of the tenancy.
- He testified that in the evening of January 2 to 3 Witness 2 left his room locked with his stereo up loud. Witness 2 was not present to turn the stereo down. He was able to turn the stereo off by disconnecting the cablevision.

- The tenant denies threatening Witness 2
- The tenant denies breaking the door.

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy based on a balance of probabilities. After hearing the conflicting evidence I determined the landlord has established sufficient cause for the following reasons:

- I determined the tenant has significantly interfered with and unreasonably disturbed the other tenants in the rental unit and the landlord. I accept the evidence of Witness 2 that the noise from the tenant unreasonably disturbed him. I further accept the testimony of Witness 2 that he was threatened by the tenant and this caused him to leave. I also accept the testimony of Witness 1 who testified he would sleep in his camper as he felt uncomfortable around the tenant. Even Witness 1 and 2 had smoked in or near the rental unit this would not give the tenant the right to threaten these tenants in manner that he did.
- I determined the tenant broke the door of the room occupied by Witness 2. The standard of proof required is that of a balance of probabilities. The door was not damaged before that evening. Witness 2 was staying with a friend. There is no reason to believe that Witness 1 caused the damage. The tenant failed to provide a reasonable explanation as to how the door could be damaged in the absence of his misconduct.
- I am satisfied that the tenant's conduct in the evening of January 2 to 3 unreasonably disturbed the landlord and her family. Their testimony was compelling. It resulted in the police being called.
- The landlord has been unable to rent the rental unit for fear of the conduct of the tenant.
- I determined the tenant has caused extraordinary damage to the door to the room of Witness 2.

- I determined the tenant seriously jeopardized the health or safety of another occupant and the landlord.

As a result I determined the landlord has established sufficient cause to end the tenancy. I dismissed the tenant's application to cancel the one month Notice to End tenancy. The tenancy shall end on the date set out in the Notice.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant's application to cancel the one month Notice to End Tenancy has been dismissed.

Accordingly, I granted the landlord an Order for Possession effective February 28, 2015.

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's Application for a Monetary Order:

The Application for Dispute Resolution filed by the tenant sought a monetary order in the sum of \$2000. Rule 2.5 of the Rules of Procedure provides to the extent possible the applicant must file a detailed calculation of any monetary claim made at the time the Application is filed. The tenant failed to file a detailed calculation at the time the Application was made. However, he filed a monetary order worksheet dated February 3, 2015 claimed \$721. I determined the tenant failed to file sufficient particulars of a claim for \$2000. However, he is entitled to a hearing on his claim of \$721, With respect to each of the claims:

- a. I dismissed the tenant's claim of \$375 for the cost of cleaning at the time he moved in. The landlord did not ask him to do the work nor did the landlord agree to pay him. The tenant failed to provide sufficient proof to establish the landlord is liable for this claim

- b. I dismissed the tenant's claim in the sum of \$70 for the cost of dry cleaning. The failed to prove the landlord's conduct caused him to incur the dry cleaning expense.
- c. I dismissed the tenant's claim for the cost of moving. For the reasons set out above I determined the landlord has established sufficient cause to end the tenancy. The landlord is not responsible to pay the tenant's moving cost.

In summary I ordered that the tenant's monetary claim be dismissed.

I dismissed the tenant's claim for emergency repairs and for an order allowing the tenant to reduce rent for repair, services and facilities agreed upon but not provided as the tenant failed to present sufficient evidence to establish these claims.

The tenant sought an order authorizing the tenant to change the locks. The tenant testified the landlord enters the rental unit where the landlord does not have a legal right to do so. Section 29 of the Residential Tenancy Act provides as follows:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I determined in the circumstances that it was not appropriate to make such an order. However the parties are advised that if the landlord breaches section 29 it may be grounds for a monetary claim under section 28 for breach of the covenant of quiet enjoyment which provides as follows:

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.

Landlord's Application: - Order for Possession:

For the reasons set out about I determine the landlord is entitled to an Order for Possession effective February 28, 2015.

Landlord's Application - Monetary Order and Cost of Filing fee

I determined the tenant caused the damage to the door. However, I determined it was not appropriate to grant a monetary order in favor of the landlord at this time as it is possible the tenant will repair the damage before he vacates the rental unit. The landlord has liberty to re-apply.

I determined the landlord is entitled to recover the cost of the filing fee. I ordered that the tenant pay to the landlord the sum of \$50 such sum may be deducted from the security deposit.

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: February 09, 2015

Residential Tenancy Branch

