



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for;

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("the 2 Month Notice") pursuant to section 49; and
- a monetary order for compensation for damage or loss under the Act, Regulations or tenancy agreement pursuant to section 67.

The landlord applied orally at this hearing for an Order of Possession pursuant to section 55 should the tenant's application be dismissed.

The tenant and a representative for the landlords ("the manager") both attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords' representative provided a summary of potential witness testimony, however it was determined that the witness testimony was not relevant to the landlords' notice to end tenancy pursuant to section 49 or the landlords' oral application pursuant to section 55. Further, the potential witness testimony described did not provide evidence relevant to any of the tenant's claims.

The manager provided evidence that a 2 Month Notice to End Tenancy for Landlord's Use was served to the tenant by leaving it in a conspicuous place, on the stairs to the tenant's rental unit on December 30, 2014. The tenant confirmed receipt of the 2 Month Notice and gave sworn testimony that she personally served the landlord, by providing the Application for Dispute Resolution hearing package to the manager on January 17, 2015. Based on the evidence, I accept that the tenant was deemed served with the 2 Month Notice and the landlords were duly served with the landlord's Application for Dispute Resolution hearing package in accordance with the Act.

The manager also testified that she served a package of evidence to the tenant on January 26, 2015. The tenant confirmed receipt of that package. I accept that the tenant was duly served with this package. The tenant testified that she provided documentary evidence to the landlord on February 3, 2015 (2 days prior to this hearing). The landlord confirmed receipt of these

documentary materials and confirmed she was able to sufficiently review these materials prior to this hearing. I accept that the landlord was duly served with this evidence.

The tenant also attempted to file and serve digital evidence. That evidence was not filed or served in the format or timeline required under Residential Tenancy Policy Guideline No. 42 and Rule 3.10 of the Residential Tenancy Branch Rules of Procedure. As the landlord had not seen that evidence and it had not been submitted pursuant to the *Act*, the digital evidence was excluded from this hearing.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to compensation for damage or loss under the *Act*, Regulations or the tenancy agreement?

Background and Evidence

This month to month tenancy began in June 2007. The current rental amount is \$450.00. The manager testified that the landlord continues to hold a \$225.00 security deposit paid by the tenant in April 27, 2007. The tenant continues to reside in the rental unit and, when provided with a 2 Month Notice to End Tenancy, she applied to have that notice cancelled.

The manager testified that the 2 Month Notice was issued so that she and her son could move into the tenant's rental unit. The landlord's documentary evidence includes two letters; the first one indicating that the manager had been hired for six months and would reside in Suite # 1; the second letter indicating that the manager had been retained for full time employment and would reside in Suite #3 and #4 with her son. The manager testified that the tenant currently resides in Suite #4. The second letter is dated November 1, 2014.

The tenant testified that she has received "numerous eviction notices" with respect to her tenancy. She testified that she has received 3 Notices to End Tenancy recently, and has applied as recently as November 2014 to cancel a 2 Month Notice issued to her by the landlord. That 2 Month Notice was cancelled by the arbitrator. Included in her documentary evidence were copies of 2 recent (2014) Notices to End Tenancy provided to the tenant by the landlord as well as a notice from 2013 and a notice from 2012.

The tenant testified that, on August 8, 2014, the landlords offered her \$5000.00 to sign a mutual agreement to end tenancy effective September 15, 2014. The manager testified that this offer was rescinded when the tenant failed to move out by the designated date (September 15, 2014).

The tenant testified that she has put much effort and money into removing and moving items around on her balcony. The manager testified, supported by documentary evidence that the

tenant had been asked to remove all items from her balcony as the landlord needs to repair or likely replace it. Those requests began in October 2014. The manager testified that the tenant's balcony requires extensive repair or possible replacement. She also testified that the work cannot be done with any items on the balcony; "It needs to be completely demolished". Both parties testified that the tenant's balcony is very large and that there is a great deal of items on the balcony. The tenant testified that she paid a friend \$300.00 to help her clear off a portion of her balcony at the request of the landlords. She also testified that she has paid \$525.00 in storage fees (7 months @ \$75.00 per month) to keep these items off her patio. The manager testified that, while the tenant has made some efforts, there are still too many items on her patio to allow repair to take place.

The tenant testified that there has also been a significant pest problem (mice) on the residential premises for many years now. The manager confirmed this claim. The tenant testified the problem has existed since she moved in. The tenant testified and provided receipts and itemization of her time to show various purchases she has made to try to rectify the pest problem herself. The tenant testified that she has plugged up holes all around the residential premises of her own accord. The manager testified that the landlord had reduced the tenant's rent by the amount of the receipts provided by the tenant. The tenant acknowledges this reduction for expenses but seeks further compensation for lack of quiet enjoyment and loss of value of her tenancy due to the pest problem.

Analysis: Cancel notice to end tenancy

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify that the notice was properly prepared, properly served and that the grounds provided in the notice are justified.

In the case of a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord must prove, on a balance of probabilities, that the landlord intends to end the tenancy to use that property in a manner permitted under the *Act*. In this case, the landlord relies on section 49(3) of the *Act* in that they claim that a "landlord" or the landlord's family intends to reside in the unit.

The manager of the premises testified that the notice was issued so that she and her son could move into the tenant's rental unit. In section 49(1) of the *Act*, the definition of landlord is limited further than within the overall provisions of the *Act*. The definition of a landlord includes reference to an individual who has "reversionary" interest in the rental unit. Reversionary interest refers, basically, to a potential or temporary or ultimate right to ownership of the property. The manager of this building, while representing the landlord at this hearing and while considered a landlord for certain purposes under the *Act*, including service of documents, is not a party with reversionary interest.

The landlord has issued a notice to end tenancy under the proviso that the landlord or landlord's family will be using the premises however this is not the case. The tenant gave undisputed testimony supported by written evidence that she has received numerous eviction notices with respect to her tenancy in the past 6 months and that, on hearing, all of the notices have been cancelled. She also testified that her unit is the largest rental unit in the residential premises and she believes that the landlord's motivation to end her tenancy is based on a desire to rent or use this suite for purposes not stated in section 49 or claimed on the landlord's notice to end tenancy.

Based on the purpose for use provided by the manager at this hearing, and the documentary evidence provided by both parties, I find that the landlord's notice does not accurately reflect the use intended in ending this tenancy. I further find that the landlord has provided previous notices in an attempt to have the tenant vacate her rental unit. None of those attempts have been successful.

I grant the tenant's application to cancel the notice to end tenancy.

Analysis: monetary award

The tenant also applied for a monetary order. In her testimony, she provided the following breakdown of her \$6888.00 application;

Item	Amount
Landlord offer outlined on mutual agreement to end tenancy	\$5000.00
Payment to friend to move objects from patio	\$300.00
Payments for storage fees for objects moved from her patio (\$75 for 7 months)	\$525.00
General compensation for lack of quiet enjoyment and loss of tenancy use due to pest problem over 7 years	\$1063.00
Total Monetary Amount Sought by Tenant	\$6888.00

With respect to the \$50000.00 offer from the landlord, that offer was contingent on the tenant moving out. The tenant did not move out or agree to move at a future date. She has applied to cancel the notice to end her tenancy. That application has been granted. Given all of these facts, the tenant is not entitled to \$5000.00.

With respect to the \$300.00 paid to a friend to help the tenant clear off her patio at the request of the landlord, section 32 of the *Act* identifies the obligations of both tenants and landlords to repair and maintain the residential property. A landlord must ensure that the property complies with health, safety and housing standards at law while a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. The parties do not dispute that the obligation lies with the landlord in this case to repair the patio. Given the evidence at the hearing including the tenant's undisputed testimony that she has required assistance in removing the items on her patio and that removal came at the landlord's request, I find that the tenant is entitled to reasonable reimbursement for both the removal of the items and the storage of the items that would otherwise be stored on her patio. However, the tenant has not provided documentation with respect to the payment of her friend. I estimate a cost of \$10.00 per hour for 8 hours work in relocating the tenant's items for a compensatory amount of \$80.00.

With respect to the \$525.00 in storage unit fees for the past 7 months, I find that the tenant is entitled to some compensation for the storage of her items. She provided receipts with respect to the storage that indicate an actual storage amount of \$ 67.95 including tax. Residential Policy Guideline No. 5 states that whether a landlord or tenant incur costs, it is necessary for the party to mitigate or minimize that loss incurred. I find that the tenant could have taken steps to dispose of unnecessary items or to relocate the items in her home or find another less costly manner to store the items after some months. I find that it is particularly important for the tenant to minimize her loss with respect to storage when the undisputed testimony of the manager on behalf of the landlord is that the tenant has not taken all steps to allow the landlords to repair the balcony. Since the tenant must accept some responsibility for the length of time that her items have been in storage, I find she is entitled to be compensated for 3 months of storage at \$67.95 per month totalling \$203.85.

With respect to the tenant's claim that, over the past 7 years, her right to quiet enjoyment has been impacted by the mouse/pest situation on the residential premises as well as the recent "harassment" in repeated notices to end tenancy, I refer to Residential Policy Guideline No. 16 which states the right to quiet enjoyment includes but is not limited to; reasonable privacy; freedom from unreasonable disturbance; exclusive possession; and use of common areas for reasonable and lawful purposes, free from significant interference.

To consider the amount of damages, if any, to be awarded in a given situation, I must consider; the amount of disruption suffered by the tenant; the reason for the disruption; if there was any benefit to the tenant in the disruption; and whether or not the landlord has made his or her best efforts to minimize any disruptions to the tenant. I was not provided with any evidence to suggest that the landlords have been neglectful with respect to this pest problem. The testimony of the parties is merely that this insidious issue has not been resolved. The landlords have compensated the tenant for taking her own steps to address the pest issue. Further, I was provided with very limited testimony outlining how this pest problem has resulted in a disruption to the tenant. However, given the undisputed testimony of the tenant regarding the ongoing nature of this particular issue, I find that some responsibility falls to the landlord with respect to

the pest issue and, further, that the nature of this issue would create a general disruption for the tenant. Based on these circumstances, I award the tenant with \$240.00 (24 months at \$10.00 per month) to reflect a reduction in the enjoyment of her tenancy as a result of the ongoing pest problem.

With respect to the tenant's allegations of harassment by the landlord, I refer to Policy Guideline No. 6;

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome” As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

The tenant has provided some evidence of ongoing activity in the nature of attempts to end the tenancy. The tenant has provided some evidence, in the form of doctor's notes, to suggest that the attempts at evictions have created anxiety for her. However, I do not find, based on the evidence at the time of this hearing that the landlord has engaged in harassment. Further notices provided in a frivolous manner may be considered harassment and subject to an application for damages by the tenant.

Conclusion

I grant the tenant's application to cancel the notice to end tenancy. The tenancy will continue. As the tenant's application to cancel the notice to end tenancy was not dismissed, I deny the landlord's oral request for an Order of Possession.

I issue a monetary Order in favour of the tenant follows:

Payment to a friend to move objects from her patio	\$80.00
Payments for storage fees for objects moved from her patio (\$67.95 for 3 months)	\$203.85
General compensation for lack of quiet enjoyment and loss of tenancy use due to pest problem over 7 years	\$240.00
Total Monetary Order	\$523.85

The tenant is provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia. This monetary Order may also be implemented by way of the tenant's reduction in future monthly rent payments totaling \$523.85, accompanied by notice to the landlords of the tenant's intention to do so.

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 26, 2015

Residential Tenancy Branch

