



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, PSF, RR, FF

Introduction

The tenants apply to cancel a two month Notice to End Tenancy for landlord use of property dated and served February 20, 2015. They also seeks relief related to a claim that the landlord has discontinued laundry, cable and “wifi” services and that he is harassing the female tenant..

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord has good ground for issuing the Notice and has a good faith intention of housing his father and mother in the rental unit, as he alleges? Does that evidence show that the tenants have lost services or has been harassed? If so, what is the proper remedy?

Background and Evidence

The rental unit is a two bedroom basement suite in the lower portion of the landlord’s house. There is an adjacent, one bedroom suite in the lower portion as well, housing a different tenant.

The tenant resides in the suite with her husband, her parents and her two children. She says her husband is a long distance truck driver and is usually away during the week. She works during the day and her parents tend to the children during that time.

The tenancy started in October 2013. The home was newly renovated just prior. The landlord and his family began occupying the upper portion of the house in the following December.

The monthly rent is presently \$750.00. The landlord holds the tenants' \$360.00 security deposit.

There is no written tenancy agreement.

When a Notice to End Tenancy is challenged, the initial burden falls to the landlord to establish the validity of the Notice.

In this case, the landlord testified that his father, who lives with him, can no longer climb the stairs up and down from the main entrance to the landlord's upper portion, due to his failing knee. The landlord provided a prescription form said to be from his father's doctor. The form is dated March 2, 2015. It identifies the father and says "This gentleman is not able to climb stairs all day. He has leg pains. Please provide alternative (indecipherable)."

The attending tenant testified that the Notice is retaliation by the landlord because she had just successfully challenged a one month Notice to End Tenancy for cause, in which the landlord alleged that there were too many occupants in her suite and that she and her family were disturbing him by making telephone calls late at night.

The hearing of that matter took place and the decision was rendered February 17, 2015. The file number is recorded on the first page of this decision.

The attending tenant says that immediately upon receipt of that decision the landlord issued the two month Notice.

The attending tenant says that if the landlord's father really had to move to the lower level because of a difficulty with stairs, the neighbouring one bedroom suite would be the appropriate one, not her two bedroom suite. The landlord did not make a reply to this allegation.

She says that the landlord is also retaliating because they refused his attempt to raise their rent by \$50.00 in January 2015. The landlord did not make a reply to this allegation.

As well, she says, on or about February 17th her television cable connection was shut off as well had her "wifi" access. She says that the two services had been provided to her from the start of the tenancy as part of the rent.

She says that on February 21st she went to use the common laundry facility but the landlord refused to let her into the laundry area. She says she has used the laundry facilities on Saturdays since the start of the tenancy and that is part of her rent.

The landlord responded saying that the tenant has never had cable or wifi service and has never had access to or use of the laundry facility.

He says the neighbouring tenant in the lower portion never had those services either.

Mr. M.G. gave evidence. He is not related to the tenants thought they have the same last name. He works for the cable company. On March 3rd, he attended the tenants' suite and removed a digital cable box.

When Mr. M.G. attended to remove the box, the landlord told him that it belonged to the cable company, however, he determined that it did not and gave it to the landlord. At that time he thought it belonged to the landlord and signed a note for the tenants to that effect.

When the landlord saw the note he returned the box to the cable company saying it was not his. At hearing Mr. M.G., who had checked the registration of the box that was returned to him by the landlord, determined that it belonged to someone in another city in the lower mainland. Mr. G. was not at liberty to disclose the name of the owner due to privacy concerns.

The attending tenant responded saying she had the number of the box removed from her suite and that the cable company told her it was registered in the name of the landlord's father.

It seems to be clear that the box did not belong to the tenants or anyone in their household. It also appears to be clear that the cable man attended and recovered the cable box from the tenant's suite at the request of the landlord.

The tenant claims the landlord is "looking in her window."

The landlord complains that the tenants are parking their car in the middle of the driveway so as to block access to the garage and had complaints about the tenants opening the windows.

Analysis

Residential Tenancy Policy Guideline 2 “Good Faith Requirement when Ending a Tenancy” provides:

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Whether the landlord gave the two month Notice in good faith or not is a question that depends largely on his credibility. The doctor’s note is not of particular assistance as it refers to the patient having to climb stairs “all day” and it has not been established that the landlord’s father is subject to such a rigorous regime.

I find that I have very little faith in the credibility of the landlord, particularly as a result of his testimony surrounding the cable box.

If the tenants had not had a cable connection since move in, as Mr. M.G. indicates, why did they have someone else’s digital cable box at all in their suite for over fifteen months? Why did the landlord have the cable company attend to remove it if it was not his and at the same time the tenant claims the service was cut off? How did he know it was there? Why did the landlord keep the cable box until he saw the note the tenants obtained from Mr. M.G.?

The facts point to conclusion that the tenants had been provided with the digital cable box as part of their tenancy and that the landlord cut that service and arranged for the cable company to remove the cable box.

The landlord’s evidence denying the laundry service was not credible either. At the start of the tenancy the tenants moved in with two children. There is a laundry facility in the adjoining lower area. I find it highly unlikely that use of that facility was not negotiated as part of the rent or that the tenants would invent a claim that it was included in their rent after fifteen months of doing the laundry somewhere else.

As a result of this finding I doubt the credibility of the landlord generally.

Given this lack of credibility and the fact that the two month Notice was served almost immediately upon the heels of the cancellation of the prior one month Notice to End Tenancy for cause, I find that the landlord does not have a good faith intention to use the tenants’ suite to accommodate his father.

I cancel the two month Notice to End Tenancy.

I find that the tenants did have cable service and laundry service as part of their rent from the start of the tenancy. The service referred to as "wifi" was not fully explained at hearing. It is not clear whether it is cable-less access to internet or internet access by means of the physical cable itself. In either case, I find that the tenants were provided with internet access as part of their rent.

These services have been wrongfully disconnected or denied by the landlord and I order and direct that they be restored in full by the landlord forthwith at no cost to the tenants.

I grant the tenants compensation for loss of these services for the last part of February to the end of March 2015 in the amount of \$150.00.

Commencing April 1, 2015 I authorize the tenants to reduce their monthly rent by \$150.00 until the first of the month following the date on which all three services have been restored.

The attending tenant has failed to provide evidence that the landlord is harassing her by looking in the windows. I dismiss this item of the claim.

The landlord's complaints about open windows and parking are not a proper subject for this dispute hearing. If he wishes to pursue those matters he must make his own application for dispute resolution, setting out the particulars of his allegations.

Conclusion

The two month Notice to End Tenancy dated February 20, 2015 is hereby cancelled.

The tenants are entitled to a compliance order for restoration of the cable, internet access and laundry facility, on the terms outlined above.

The tenants are entitled to compensation of \$150.00 for loss of services to the end of March 2015, plus recovery of the \$50.00 filing fee. I authorize the tenants to reduce their next rent due by \$200.00 in full satisfaction of this award.

The tenants are entitled to a rent reduction of \$150.00 per month commencing April 1, 2015 and continuing until the first of the month following the date on which all three services have been restored.

When combined, the monetary award and rent reduction will result in an April rent reduced by \$350.00 and then by \$150.00 for the months following.

If this decision is not received before April 1, 2015, and the tenants pay the April rent in full, then the award of \$200.00 and the rent reduction of \$150.00 will commence with the May 2015 rent, but in addition, the tenants may reduce the May rent an additional \$150.00 to account for payment of a full month's rent for April 2015.

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: March 25, 2015

Residential Tenancy Branch

