



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

a A matter regarding Forbes Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RR, OPC, MNDC, MNSD, FF

Introduction

This hearing was set to deal with two related applications. One is the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause, a monetary order, and an order allowing the retention of the security deposit in partial satisfaction of the claim. The other is the tenant's application for orders setting aside the 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; and allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- If not, has the landlord discontinued a service or facility?
- If so, what compensation should the tenant receive for that discontinuation?

Background and Evidence

Background

The rental unit is a small log cabin. The property on which it is located is a 5 acre lakeshore peninsula which was once the site of a hotel.

The peninsula is divided into two parcels. Parcel A is owned by the landlord company. The landlord filed a copy of the tax assessment notice for this property and the tenant filed a copy of the title search. Both show the landlord as the registered owner. The landlord advised that the company had been a numbered company but the name had been changed to the present name.

Parcel B is owned by a numbered company. The landlord filed a copy of the tax assessment notice for this property and the tenant filed a copy of the title search. Both show a numbered company as the registered owner of the property. Registered against this title is a certificate of pending litigation filed by the landlord.

The landlord company is owned by one shareholder. The shareholder appeared for herself and for the company.

The landlord and her husband bought the property in 1989. In 1994 they built a larger log house and a smaller log cabin in 1994. The house had been rented out in recent years but last year it was extensively damaged by fire. The reconstruction is nearing an end but is not yet completed. Someone has agreed to rent it when it is ready for occupancy.

There are three other cabins on the property. Those are rented year round. Two of the residents have been there for several years and the other for a few weeks. The landlord also rent up to 10 RV sites seasonally and the property is advertised as an RV park.

The landlord testified that her husband died unexpectedly six years ago. They had been separated for five years before his death. The peninsula had been divided between them. She owned parcel A through her company; he owned parcel B through his company. Her husband's will left his estate to their daughter, who was only a teenager at the time of his death, and named a relative of his as his executor.

The landlord testified that the time after her husband's death was very difficult for her. Her daughter was acting out; she was caring for her elderly mother-in-law who had dementia, and she had another business in addition to this property. The result of these personal factors was that she was not a very active manager of this property for several years. However, as things in her personal life have improved and she is feeling better she is trying to action to improve the property.

The tenant is 75 years old. Before his retirement he operated his own refrigeration company but he has not worked in that business for six years. He was a friend of the landlord's husband. His tenancy started April 1, 2007. Since the start of his tenancy the monthly rent has remained at \$500.00, including all utilities. For the first few years of his tenancy he did some maintenance at the property for the landlord.

There has been conflict between the parties in the past year. The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The tenant disputed the notice and was successful on his application for dispute resolution.

In November 2014 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. Once again the tenant disputed the notice. The landlord did not file any evidence at the hearing and in a decision dated January 6, 2015; the tenant's application was granted on the ground that the landlord had not met the required standard of proof.

Storage Shed

The two properties share a water system. The water is pumped from the lake. The pump house is located on parcel B. It is at least 40 years old and was in very poor condition. Next to the pump house is a concrete cistern.

Sometime after 2009 the health authority ordered that the water system be updated. BC Hydro also required the landlord to install a new power pole. Part of the update was a new holding tank. The concrete cistern was pumped out, cleaned and converted to a pump house. When it was ready the pump and the new holding tank were installed in the former cistern. While the cistern was being renovated the contractor who was doing the work brought out and set up a 7' by 7' Rubbermaid shed and the holding tank was placed in it until the renovation of the concrete cistern was completed.

According to the landlord the entire project cost about \$30,000.0. She paid for the work. The neighbours were to contribute to the cost but did not, so she has registered a lien against parcel B. This is the certificate of pending litigation shown on the title search.

The landlord says that the work done is the first stage of what the health authority will require in the future. The shed was just left on site in case it was needed in the future.

The landlord says that because of her personal difficulties she did not realize that the tenant had moved his own belongings into the shed and locked it. About a year and a half ago the contractor who owns the shed told her that it was locked.

The tenant says that the landlord gave him permission, twice, to use the shed – once before it was used as a temporary pump house and again after it had fulfilled that purpose. Because it was it is an isolated situation he put a lock on it. He says he would not have put anything into the shed if he had not had permission to do so. The tenant also testified that use of the shed was compensation for the maintenance he used to do around the property.

The tenant insisted that the Land Titles records show that the landlord owns the adjacent property. He also thinks that the shed belongs to the landlord, not to a contractor, because he recently saw the landlord's employee haul the shed away on a truck and saw the shed at the landlord's place of business.

The landlord said she was just moving the shed for the contractor. Her position is that she would not have given the tenant the use of the storage shed without charging him extra for it.

The landlord testified that since the fire in the log house her property is being carefully scrutinized by the insurance company.

The landlord testified that on an inspection of the property the insurance company noticed that the roof of the old shed was caved in. The shed is at the top of a steep bank and there is an RV site below. The insurance company was concerned that the shed could slide down the bank. In addition, the tanks inside are rusty and there was concern that the rust was leaching into the water supply. The health authority also looked at the situation and expressed the same concern. The landlord said that both the insurance company and the health authority directed her to take action.

The tenant testified that the landlord exaggerated the risk posed by the shed and questioned her description of the risk to the water supply.

The landlord hired DC to remove the old shed. They wanted the new shed removed so the contractor's heavy equipment could get to the old shed.

On January 7, 2015, the landlord wrote the tenant explaining the situation and asking him to remove his belongings from the shed.

The tenant responded by a letter dated January 14, 2015. The tenant says that the landlord gave him permission to use the shed; that in the spring of 2014 he had a conversation with DC about moving the shed to a spot near his cabin; and that the landlord's letter is being sent the day after the landlord had lost her second attempt to evict him.

The tenant offered the landlord three options:

1. Leave the shed where it was. In his opinion there was enough room to manually dismantle the wooded shed.
2. Move the shed to a spot 30 feet from his cabin.
3. Give him 30 days written notice of termination or restriction of a service and reduce the rent in an amount equivalent to the value of the service being discontinued.

The landlord responded on January 17 that the shed was on neighbouring property; it belonged to someone else; and the contractor was going to remove it between February 20 and February 28.

On January 26 the insurance company wrote the landlord advising that: "High Hazard Recommendations: "The company has advised that due to the hazardous state of the old pump house – roof collapsing – that it must be demolished and debris removed immediately as any liability claims arising from this well be declined." They gave the landlord 30 days to advise in writing of the changes made and/or plans for further improvement.

On February 6 the tenant filed his application for dispute resolution asking for orders that the landlord comply with the act, regulation or tenancy agreement and that his rent be reduced for services or facilities agreed upon but not provided.

On February 7 the landlord delivered a letter to the tenant advising him that the contractor would be removing the shed on February 16 and asking him to remove his contents on or before 3:00 pm, February 126.

By this time DC had quit. The landlord said this was because he was tired of dealing with the tenant's abusive behaviour. She hired RG to remove the wooden shed.

The tenant did not move anything.

On February 16 the landlord and the property manager from next door cut the lock on the shed, loaded up the contents and delivered them to the front of the tenant's cabin. At the tenant's request they went back, loaded up the metal shelving that was in the shed and delivered them to the tenant's cabin. The tenant had cleaned everything away from the left side of the cabin so there was a place for the shelves. As of the date of the hearing, everything had been put on the shelves and the shelves covered with tarps.

The landlord testified that she told the tenant that if he bought his own shed he could set it up in a storage area on the property but he refused. His testimony is that no such offer was ever made.

The old shed was demolished and the debris hauled away.

Clutter

In January 2014 the insurance company expressed a concern about the volume of material stacked around the tenant's cabin, particularly firewood stacked against the outside wall. The landlord hired MJ to help the tenant clean up the area around that cabin. These efforts were successful and both the landlord and the insurance company were happy with the results.

The tenant said he was going to have a garage sale in the summer and the landlord agreed to this. The tenant and MJ placed items on tables in front of the cabin in preparation for the sale.

On July 6, 2014 the landlord wrote the tenant noting that the items in front of the cabin posed two problems:

- It created a safety hazard.
- It was unsightly. This was particularly important because this cabin is the first thing other tenants and customers see when they drive onto the property.

The landlord asked the tenant to provide her with his plan for rectifying the situation within seven days.

On July 21, 2014, the insurance company sent the landlord photographs of the cabin before and after the clean-up with a note that said: "just want to remind you that to maintain your business insurance in force part of your compliance (as per your insurance company) was to keep cabin tidy at all times as not to be a fire hazard or a liability – the wood pile must be kept at least 4 feet away from the main building at all times. Please advise when the clean-up is complete and I would be happy to advise the insurance company."

The garage sale never happened. By January all the tables, covered in tarps, were still in front of the cabin.

On January 15 the landlord again wrote the tenant about the materials around his cabin. She asked him to consider the letter as a second written request to clean up the area around his cabin. The letter points out that the tenant has been nailing and screwing shelved to the exterior log walls of the cabin and that the tenant had posted a "Keep Out/Private" sign to an exterior wall. She detailed the maintenance risks that holes in log walls could create.

The landlord also pointed out that the tenant had four motor vehicles parked in front of the cabin: a 40' motor home, a boat and trailer, and two vans. She asked him to only park one vehicle by the cabin and to park the other three in the storage area.

The landlord also outlined the fire hazard as she saw it. The property is 12 kilometers from the nearest fire hall. The tenant's cabin and the larger log home are about 30 feet apart. Also in a row with the two log cabins are an electrical shed, a free standing garage, and a tool shed. Between the two log buildings are several large fir trees, a wood shed, propane tanks and the tenant's motor vehicles and possessions. She expressed the concern that if a fire started all of this would burn before the fire department could get there.

On January 26 the landlord received a letter from the insurance company. It refers to an inspection on January 19. The letter stated: "The cabin has been deemed a hazard based on the amount of clutter surrounding the entire building as well as the amount of extension cords extended from the main building to other power sources. If the building is not completely cleaned up and stay cleaned up consistently they will exclude any and all coverage from that unit." They ask for a response within 30 days.

On February 6 the landlord again wrote the tenant asking him to remove the "Keep Out/Private" sign from the exterior of the cabin, clean up the materials around the yard, take down the shelves, patch/fill the holes in the logs, and park three vehicles in the storage area. She advised the tenant that a 1 Month Notice to End Tenancy for Cause would be issued if he did not comply.

The tenant took down the sign but left it leaning against the cabin, removed some shelves and patched/filled the holes in the logs.

Instead of moving his boat and trailer to the storage area the tenant created a parking spot near the cabin in the same spot he had suggested as an appropriate spot for the storage shed.

On February 6 the landlord wrote the tenant a letter which she described as a third written request to clean up all materials stacked against the cabin walls and around the cabin. The letter concludes by advising that if he does not comply with this request by February 15 a 1 Month Notice to End Tenancy would be issued.

In the hearing the landlord expressed concerns about the nature of certain items stacked on the shelves along the exterior walls of the cabin – paint cans, batteries, aerosol cans, and propane tanks – all of which are highly flammable.

On March 31 the tenant testified that within the past two weeks he had removed an empty propane tank and empty paint cans and other items left over from the restoration of his boat, and he has moved the items from the front of the cabin and put much of it into one of his vans. He said that he has left the shelves and contents from the shed under the eaves pending the outcome of the storage issue. He also testified that he has had the same four vehicles since the start of his tenancy.

The tenant testified that many of these items are from his refrigeration business and he has kept it because he may also sell his refrigeration business. He also testified that he may have to go back to work if he has to pay a higher rent. Finally, the tenant testified that he is still planning on having a garage sale

He also testified that a lady from the insurance company inspected the area on February 15 and told him it looked safe.

The landlord's response is that her plan for the area where the boat and trailer is parked does not include vehicle storage and the tenant can park these items in the designated storage area. She also said the stuff from the front of the cabin has just been moved to the back of the cabin and covered with tarps.

On February 16 the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice were:

- Tenant has put the landlord's property at significant risk.
- Tenant has caused extraordinary damage to the unit/site or property/park.

On February 20 the tenant amended his application for dispute resolution to include a request for an order setting aside the notice to end tenancy.

Behaviour

The landlord had received complaints about the tenant's behaviour in the past.

On December 23, 2014 DC wrote the landlord setting out some of his experiences with the tenant. He said that over the past several months, while working around the property, the tenant had verbally abused him on several occasions and that he has seen the tenant speaking ill of the landlord to other tenants and visitors to the property. "I have been in discussions with yourself regarding work projects when [tenant] has approached us screaming out loud, obviously becoming very stressed, slobbering and spitting with rage, red in the fact and visible shaking." He also states that the tenant seeks him out to complain about the landlord.

The landlord wrote to the tenant about the complaints she had received in a letter dated February 17. She described an incident involving herself on February 16 and a complaint she had received about an incident on February 15. She was told that a contractor who was scoping out a job was approached by the tenant, who followed the contractor around telling him what he should and should not do. Her information was that the contractor refused to take the job as a result of the tenant's behaviour.

The landlord's evidence regarding the incident on February 16 was that the tenant came into the cabin 3 and said many things to her including: she had rented out his cabin while he was away; she treated her mother-in-law like garbage; she would have to hire the bikers to get him out; she was a greedy, ruthless person and a poor excuse for a woman.

This second incident was described in a letter submitted by the manager for the property next door as follows: "He lurked behind his motorhome the entire time listening and would periodically chime in with more threats and unnecessary comments. He was so verbally aggressive that the potential masonry contractor expressed concern about doing any work up at the property."

On February 22 there was another episode involving the landlord and the tenant. The landlord was at the property, at cabin 3. According to the landlord's assistant, the tenant kept going in and out of the cabin, each time to make a remark to the landlord. Those comments included:

- I am going to call the authorities on you. I have a lot to report. There are a lot of things around here.
- I'm not moving my van, I made a new parking spot for it.
- You are going to lose in arbitration. You lost twice before and are going to lose again.
- You and me baby alone in court we don't need lawyers.

According to the landlord and the assistant this went on for the whole afternoon. When the landlord left the property the tenant blew kisses at the landlord, waved, and said "I love you, you and I should get in my motor home and go to Vegas and get married."

The assistant's letter said that since October of 2014 she has been working approximately 35 hours per week at the property. She now refuses to go to the property alone because of the tenant's behaviour. She described the tenant's behaviour towards the landlord as rude, sarcastic and threatening.

The landlord testified that she hired the assistant in part to have someone accompany her whenever she goes to the property. She is not comfortable going there alone because of the way the tenant treats her.

The landlord wrote the tenant on February 22 regarding complaints she had received about his conduct to others. She set out her feelings as to why she feels unsafe on her property. She also itemized a series of incidents over the previous several months where the tenant had

approached her employees or contractors in order to say uncomplimentary things about her. She said that on one occasion the tenant told the potential contractor that the landlord did not pay her bills and he would not get paid. She set out some of the provisions of the *Residential Tenancy Act* and asked the tenant to act accordingly.

On February 24 the landlord amended the 1 Month Notice to End Tenancy for Cause by adding the following grounds:

- Tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.
- Tenant has significantly jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable period of time after written notice to do so.

and posted it on the door of the rental unit.

Also filed in evidence by the landlord were letters from an RV tenant who complained about the tenant snooping around his site and through his possession. He said the tenant makes up stories "in his ongoing attempt to pit one tenant against the other and all of us against the owner. This witness concluded his letter with the statement "We pay a fee to have the privilege to spend out time at the lake to relax and enjoy its bueghthy not to have to spend our time avoiding [the tenant] and look over our shoulders and trying to avoid him." (SIC)

There were letters from another tenant, a person working on cabin 3 and the landlord's daughter. All of these letters complained about the tenant's behaviour.

There was an e-mail from the landlord's contractor dated March 2 which stated: "I just got a call from the city about your permit. Wondering if someone was living in there. Obviously a [tenant] complaint. They are fishing around with. . . The inspector seemed completely understanding."

The tenant had filed an undated letter of reference from one of the other tenants on the property. This tenant subsequently filed a letter dated March 9 that said he had given that letter of reference in 2013 for a completely different purpose. (The tenant said the letter had been given when he was applying for a passport.) The March 9 letter said "I would like to retract the reference letter I wrote for [tenant] on Sept 17 2013. I no longer associate myself with [tenant]. I choose to stay away from him as he causes problems by talking about other tenants and the landlord."

The landlord and the tenant testified that just before the last hearing date there was an incident which resulted in the police being called. The tenant said that he and the landlord had words and someone called the police. The landlord says a stranger on the beach heard the tenant yelling at her. This individual came up, told the tenant to go back into his cabin and put some

pants on, and then called the police. The tenant denied the suggestion that he was not wearing pants during this argument.

The tenant's response to the evidence filed by the landlord was a general denial. He said that the letters were all fictitious. He described all of it as just character assassination. He also pointed out that several of the witnesses were either employees or contractors of the landlord, or had a personal connection with the landlord or her family. In addition, he stated that a senior manager of the local municipality and a senior employee of the insurance company both had RVs parked at the property and the letters from the insurance company were created to help the landlord. He pointed to a recent news story that said a major construction project was planned for this area and the landlord wanted to clear him out so she could rent his cabin to one of the engineers for the project. The tenant also stated that the landlord's goal was to have all of her late husband's friends removed from the property.

The tenant also said that the tenant the landlord has doing maintenance at the property does not do as good as job as he did, and he gave some examples of what he described as poor maintenance.

Analysis

I find that the landlord's requests to the tenant to clean up the area around his cabin were reasonable. The property is a resort and to be successful it must be attractive. The landlord was within its' rights to require a certain minimum standard of tidiness at each unit.

Secondly, there has already been one fire at this property. The insurance company has had to pay out one claim and, it is clear from the evidence, are insisting on a high level of compliance from the landlord. As a former businessman the tenant should understand the importance of any business maintaining its' insurability.

The volume and nature of the materials around the exterior of the cabin prior to February 16 did not meet either of the landlord's legitimate objectives. The cabin was an eyesore and there were many flammable materials near the cabin.

Despite assistance from the landlord and repeated requests to clean up the area around his cabin the tenant has neglected or refused to comply with any of the landlord's requests. Although he had months to organize a garage sale he did not do so. He insists on parking all of his vehicles where he wants to, not in the storage area located on the property, and he never did offer a reasonable explanation as to why he could not use the storage area. Finally, he only disposed of the most flammable materials in March; months after first requested to do so.

The tenant's failure to make appropriate and timely arrangements for the storage of his belongings that were not located in the storage shed does put the landlord's property at significant risk.

The tenants' behavior toward the landlord, its' employees and contractors, is inappropriate and does constitute a significant interference with and unreasonable disturbance of the landlord. The evidence against the tenant is overwhelming and a blanket denial is one of the less convincing rebuttals to any series of allegations.

I find that the landlord has established that it has grounds, within the meaning of the *Residential Tenancy Act*, to end this tenancy. The landlord is granted an order of possession effective two days after service. If the tenant has paid the April rent the landlord cannot take any steps to enforce the order of possession until May 1, 2015.

As the tenancy has ended the question as to whether the landlord has restricted or denied a service is only marginally relevant. However, in the hearing the tenant stressed that he had filed his application for compensation for loss of use of the storage shed first. In the interest of thoroughness I will deal with this issue.

On any application the onus of proof is on the applicant, in this case the tenant, to establish their claim on a balance of probabilities.

The basic question is whether the landlord ever gave the tenant permission to use the shed. If the landlord had given permission that was a service or facility provided to a tenant. However, if the tenant had just made use of the shed without permission, he is not entitled to compensation.

The only evidence is the conflicting oral testimony of the parties.

The tenant's evidence is that use of the shed was compensation for maintenance work he used to do around the property. If that is the case it was not a service or facility provided as part of the tenancy agreement but payment for services that are no longer being provided.

The factors that suggest that the landlord did not give the tenant permission to use the shed are:

- The evidence clearly shows that the land on which the shed is located is not owned by the landlord.
- The tenant has used areas of the properties as he wishes; for example, by creating his own parking spot for his boat and trailer.

The evidence submitted by the tenant does not establish, on a balance of probabilities, that the landlord gave him permission to use the shed and that it was one of the services or facilities included in his tenancy agreement. Accordingly, the tenant's claim for compensation is dismissed.

The landlord had claimed for a monetary order against the tenant but did not submit any evidence in support of this claim. Accordingly, that claim is denied.

As the tenant was unsuccessful on his application he is not entitled to reimbursement from the landlord of the fee he paid to file it. As the landlord was substantially successful she is entitled to reimbursement from the tenant of the \$50.00 fee she paid to file her application. Pursuant to section 72 this amount may be deducted from any security deposit held by the landlord. If a security deposit was not paid by the tenant the landlord may contact the Residential Tenancy Branch and request a monetary order in the amount of \$50.00.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause is valid. An order of possession has been granted to the landlord.
- b. The claims by the landlord and the tenant for monetary compensation are denied.
- c. An order with respect to the filing fees paid by both parties has been made.

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: April 22, 2015

Residential Tenancy Branch

