



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, MNDC, OPC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for an Order of Possession for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied, under the *Act*, for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to enforce the tenants' right to access of the residential premises pursuant to section 70; and
- Another compensation or remedy unspecified under the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants and the tenants' daughter (co-tenants) both attended. They were assisted by an advocate. The landlord had two assistants and a witness attend the hearing.

The tenants initially applied for Dispute Resolution relating to a monetary order and orders regarding the landlord's compliance with the *Act* on April 7, 2015. The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause was served to the tenants on April 11, 2015. The tenants confirmed receipt of the 1 Month Notice and, in response, Tenant DM amended her application for dispute resolution to include an application to cancel the 1 Month Notice. The landlord testified that she personally served Tenant DM with the landlord's Application for Dispute Resolution on April 22, 2015. The tenant's daughter gave sworn testimony that she personally served the

landlord with the amended Application for Dispute Resolution hearing package on May 1, 2015. Based on the testimony of both parties, I accept that the tenants and her daughter (co-tenants) were sufficiently served with the 1 Month Notice and all parties were sufficiently served with the other party's Application for Dispute Resolution hearing package.

Preliminary Issues: Witness Testimony and Evidence submitted after the hearing

After initial submissions at this hearing, the landlord called a witness. The landlord's witness testified that he was the mover who relocated the tenants. Tenant DM denied that the witness was their mover and objected to his testimony.

Pursuant to section 38 of the *Administrative Tribunals Act* ("ATA") that governs the conduct of a Residential Tenancy Branch Hearing along with the *Residential Tenancy Act*, "a party to an application may call and examine witnesses, present evidence and submissions ...for a full and fair disclosure of all matters relevant to the issues in the application."

Section 75 of the *Residential Tenancy Act*, in relation to the conduct of hearings, provides that the rules of evidence should not be applied strictly to a Residential Tenancy Dispute Resolution Hearing.

75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a) necessary and appropriate, and

(b) relevant to the dispute resolution proceeding.

In ensuring the objective of ensuring a fair & efficient process for resolving disputes for landlords and tenants, all relevant evidence must be considered, unless it has not been provided to the other party in a way that follows the provisions of the *Act*. Parties are at liberty to have witnesses attend and provide relevant testimony. The other party is at liberty to examine that witness and present evidence in rebuttal. I find that the testimony of the mover in this matter is not only relevant but useful in resolving this dispute.

Both parties were given an opportunity to make submissions with respect to the testimony of this witness. The tenants both denied that this witness was their mover and submitted that the mover's testimony would be prejudicial to them in this hearing. The landlord submitted that the witness' testimony was essential to speak to the issues

raised in their notice to end tenancy. The witness testified that he could provide a contract to show that he was hired to move the tenants. The witness was given an opportunity to testify, based on the relevance of his testimony to the primary issue in this dispute. He testified that he moved the tenants from their previous home to the landlord's premises, providing details with respect to the amount of belongings he transported and his dealings with the landlord on the delivery day.

Dispute Resolution Rule 3.19 provides that "no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator." If the Arbitrator directs that additional evidence be provided, she must specify the date for the evidence to be submitted and whether the evidence must be served on the other party. The Arbitrator must also provide an opportunity for the other party to respond to the additional evidence if required.

The witness was directed to submit a copy of any contract to the *Residential Tenancy Branch* and the landlord before the end of the business day. The tenants indicated they would pick up a copy of any submission by the tenants. Out of an abundance of caution, the page of evidence submitted by the witness was sent to the tenants' advocate by the Residential Tenancy Branch via fax on May 15, 2015. The tenants were directed, at the hearing and by fax to submit any response to the evidence in writing within seven days of the hearing. No response to this submission by the witness was made by the tenants. Therefore, I allow the testimony of the witness at the hearing and the subsequent submission as evidence to be considered in this matter. I will also consider the submissions made by the tenants and the advocate at the hearing as to the veracity of this testimony.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to an order that the landlord comply with the *Act*, an order that the landlord provide the tenants access to all areas of the rental premises, a \$2092.35 monetary order from the landlord as a result of this tenancy or any other compensation or remedy unspecified under the *Act*?

Background and Evidence

At this hearing, a substantial amount of testimony was presented by both parties. In this decision, I have considered all of the testimony provided in my decision. However, I have reproduced some of the testimony that I found relevant to the issues to be decided.

This tenancy began on March 15, 2015 as a month to month tenancy. A copy of the tenancy agreement was submitted as evidence. The rental amount of \$1350.00 was payable on the 15th of each month. The landlord testified that she continues to hold a security deposit in the amount of \$600.00 paid by the tenants on February 21, 2015.

The landlord testified that, when the moving truck arrived April 1, 2015 at the residential premises, the tenants were not present at the residential property. She testified that the movers began unloading and it quickly became apparent that there were too many items to fit into the rental unit. The movers continued to unload the tenants' possessions and the landlord testified that, eventually, she told the movers to stop taking items into the unit because she was afraid that the house would be damaged structurally by the weight of all the tenants' possessions. She testified that she was worried the floors would cave in. The landlord testified, with photographs in evidence to support her testimony that a significant number of items belonging to the tenants were placed on the lawn/yard outside of the house. The photographs showed a house with a large yard. In the photographs, the yard was covered in its entirety with boxes and miscellaneous items.

The landlord also testified that, once she was able to make contact with the tenants themselves, she advised them that the amount of belongings they had brought to the property could not remain. She testified that she discussed with the tenants, when she was able to make contact with them, that she was concerned about health and safety issues at the residential premises and would require the tenants to reduce the amount of belongings on the property. She submitted copies of letters that she sent to the tenants requesting that the tenants take steps to reduce the amount of items both inside and outside of the property.

The landlord testified that, after several attempts to have the tenants meet their demands with respect to the amount of items on the property and with a growing concern for the safety of their property, as well as for the tenants, she issued a 1 Month Notice to End Tenancy for Cause citing the following reasons;

- breach of a material term of the tenancy;
- the tenants or a person permitted on the residential property by the tenants has

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk; or
- the tenants or a person permitted on the residential property by the tenants has caused extraordinary damage to a rental unit or residential property.

The landlord testified that, on the occasions that she went to the residential premises after the tenants' move-in, she always smelled a strong odour of tobacco smoke. This raised concerns with respect to fires in the home to the landlord. She testified, supported by photographs submitted into evidence that the property, interior and exterior had dilapidated items including a rusted freezer. The landlord testified that the house seemed to her to be developing mold. The landlord testified that she had significant concerns about the possibility of fire and the safety of her tenants. She testified that many areas of the unit had no space to walk and therefore, no escape route if there were a fire.

Tenant DM testified that she is in a wheelchair and rarely goes outside of her residence. She testified that she has a special needs son and that her co-tenants/daughter is responsible for most household duties. She submitted that the landlord has not provided the 1 Month Notice to End Tenancy in good faith. She submitted that she believes that the landlord's ex-husband is moving to the property but that the landlord did not take the appropriate steps, in providing a 2 Month Notice to End Tenancy for Landlord's Use of the Property and compensation to end the tenancy.

Both Tenant DM and her daughter testified that they are making progress in reducing the amount of items in the backyard. They testified that it has been difficult to sort through their belongings when they have not been allowed by the landlord to properly unpack. The tenants also testified that the landlord never specified how many items the tenants could bring to the residence. She also testified that, because they received a notice to end tenancy issued by the landlord, they stopped all work to reduce their belongings at the residence.

The tenants sought a monetary award in the amount of \$2092.35 with the following calculations and explanations provided in her application;

Item	Amount
*Heat Bill – “we were not being allowed heat in home”	\$00
*Electric Bill – “extra costs to run electric heaters”	00
Gas Bill – “gas for car to provide heat” (amended from 30.00)	50.00
Storage Unit - “not being allowed to access to one provided”	300.00
Transportation – “to move storage [items] to unit”	200.00
*Damages to property/items that were left in yard– “landlord wont [sic] allow belonging in home”	00
Would not allow freezer in home “new deep freezer”	200.00
Would not allow freezer to run “food ruined”	100.00
Total Monetary Order	\$850.00

**On this chart, the items with “00” reflect items where the tenants did not submit, in their application or during the hearing, what amounts in compensation they sought with respect to those particular claims.*

Tenant DM testified that the landlord has not allowed them to heat their home during their tenancy. The landlord responded by testifying that she was not aware of this issue until prior to the hearing. She testified that the tenants were unable to apply for an account with the local utilities in their name and therefore, struggled with this issue. She testified that the tenants were permitted to have heaters, despite her concerns about fire in the residence. Tenant DM testified that, because the landlord would not allow them to heat their home, the tenants were forced to use electric heaters. Further, she testified that she had a substantial electric bill as a result. However, the tenants did not submit any electrical bill for this hearing. The tenants, at hearing, were unable to estimate the amount of the loss with respect to heat or electricity.

Tenant DM testified that the landlord should pay for gas in her car. She testified that sometimes the tenants would run the car and sit in it for warmth. The landlord submitted that these issues were all as a result of the tenants being unable to acquire an account to provide heat to the family. The tenants sought \$50.00 for her gas costs. The tenants

submitted two submit receipts for the purchase of gas April 15, 2015 and May 15, 2015 for \$10.00 each. She also submitted a photograph of herself sitting in her car outside the residence.

Tenant DM testified that the landlord has not allowed the tenants to use the storage unit in the residence. She testified that, when she agreed to rent the property, the storage unit was to be included. The landlord testified that she had not agreed to allow the tenants to use the storage unit prior to the tenancy but testified, that she did allow them to place some items in that space to help alleviate their storage issues. The tenants sought \$300.00 for lack of use of this facility over the course of her tenancy. Her submission was based on the claim that her rent paid during the tenancy should be reduced for lack of access to this facility. She also requested an order to allow the tenants to access the storage unit. The tenants did not provide any invoice for the storage unit.

Tenant DM testified that the landlord should be responsible for the cost of her transportation to deliver her additional belongings to a storage unit both because she was not allowed to put them in her home or use the storage unit at the residence. The landlord testified in response that this was the responsibility of the tenants and the need for a storage unit was borne out of her excess of belongings. The tenants sought \$200.00 for this expense but provided no receipts reflecting the exact nature of these costs.

Tenant DM testified that the landlord should reimburse the tenants for damage to their personal property that the landlord insisted remain on the lawn and not go into the house. She submitted a list of items that were destroyed when she was unable to run her freezer at the residential premises. She submitted photographs showing defrosted chicken and frozen dinners that had been opened. She testified that, if she had been allowed to use her freezer, she would not have lost these items. She testified that the landlord had told her she could not run the freezer on the property. The landlord testified that the freezer was very old and rusted. She testified that she believes, for some time, the tenants ran the freezer outside of the residence. She testified that she did not want the freezer inside the house but did not tell the tenants they could not plug it in outside, despite its dilapidated nature.

Tenant DM testified that the landlord was unreasonable in denying the tenants access to areas of the residential premises and not allowing all of the tenants' possessions to go inside the rental unit. The tenants sought an order to require the landlord to comply with the *Act* and to allow the tenants unfettered access to the rental unit.

Tenant DM testified that the landlord did not provide laundry facilities as were originally agreed upon in this tenancy agreement. The landlord did not dispute this claim, testifying that her daughter was not comfortable sharing the space with the tenants and that she herself was concerned that the tenants would use the laundry room to store items. The tenants did not apply for an amount in compensation with respect to the lack of use of facility, particularly the laundry area.

With respect to the landlord's application for an Order of Possession, the tenants sought more time to move out of the residence stating it will take substantial time to find a new suitable home and move all of their belongings. The landlord testified that she continues to be incredibly worried about the safety of the tenants and her home. She testified that this situation has caused her a great deal of stress.

Witness testimony: During the course of the hearing, the landlord's witness ("the mover") was permitted to provide testimony, despite the objections of the tenants. The mover testified that he was called by Tenant DM to move their items to a new residence. He testified that, when he arrived with workers to load the tenants' belongings, he was surprised by the amount of items the tenants possessed. He testified that, "a lot of the stuff looked like garbage to me" and that there were rat droppings in many of the boxes. He also testified that the vast majority of the tenants' belongings were boxes; there was essentially no furniture.

The mover testified that, he had to call a second truck to load all of the tenants' items. He testified that each truck took two loads to the new location. He testified that he felt sympathy for the landlord as there was not enough room at the new location to put all of the tenants' belongings. He testified that one truck load filled the entire top floor of the house and that, when he began to unload the second truck, he agreed with the landlord that there was no more room in the house. He testified that the tenants were not present at the new premises on move-in date. The mover testified that he tried to contact the tenants on several occasions to have someone onsite for unloading. He testified that the doors to the tenants' new home were unlocked. He testified that, as issues arose with where to put all of the tenants' belongings and the landlord's concerns, he attempted several times to contact the tenants. He testified that he was unable to reach them.

After this hearing, at my request, the witness/mover submitted a copy of the contract between the mover and the tenants. That contract was dated March 27, 2015. It provided the tenants' prior address and new address as well as her full name. It provided an estimate for cost of the move and included a signature. It referenced a predetermined form of payment. It reflected the mover's testimony that one five tonne truck was ordered with three men.

Analysis

The landlord applied pursuant to section 47 of the *Act* to end the tenancy for Cause on several grounds including that the tenants ... has;

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- put the landlord's property at significant risk.

The landlord must prove, on a balance of probabilities that the cause they have provided to end tenancy is valid and justified. In this matter, the landlord has supplied sworn testimony, witness testimony, documentary evidence and photographic evidence in support of their application.

With respect to the sworn evidence, the landlord testified in a clear and direct manner. Her testimony was consistent with that of her witness when he was called to testify. The testimony was supported by both documentary and photographic evidence. I accept the landlord's testimony that, from the day the tenants moved in, the amount of personal belongings they brought to their new rental unit was excessive. I accept the landlord's testimony, undisputed on this point and supported by documentary evidence that the tenants had been cautioned on more than one occasion to reduce the amount of belongings on the property within a reasonable period of time. I accept the landlord's testimony that the tenants have not taken sufficient steps to reduce the amount of items in their home.

I also accept the photographic evidence of the landlord as a reasonable representation of the state of the residential premises. The photographic evidence provided by the landlord of both the inside and outside of the residence is compelling with respect to her claims of safety concerns. I accept the landlord's submission that a reasonable person would infer that a fire and safety hazard exists within the rental unit. Furthermore, I find that the landlord has proven the tenants' actions have created this hazard.

With respect to the witness testimony, I accept the witness' testimony in its entirety. The witness provided his testimony in an independent way, providing factual evidence and minimal opinion with respect to this matter. The veracity of his testimony was supported by the evidence that he submitted after the hearing as well as the photographs provided by the landlord.

I find that the landlord has shown, on a balance of probabilities that the tenants has seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk. Based on my finding, I need not consider the other grounds under which the landlord applied.

With respect to the tenants' application to cancel the Notice to End Tenancy, that application is dismissed.

With respect to the tenants' application for a monetary order for compensation for damage or loss, I note section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Tenant DM has testified that she has suffered loss as a result of costs related to innovative measures to heat the rental premises over April 2015 and ruined food from a freezer on the property. However, to meet her burden and prove her loss, some further evidence should be provided by the tenants. In this case, the landlord disputes all of the tenants' claims. Regardless of the credibility of either party, documentary or other evidence to support the tenants' application would allow for closer scrutiny of her claims. However, the tenants have not provided receipts or invoices with respect to the expenses she claims. She has brought no evidence to support her claim that any losses she incurred stem from a violation of an agreement or section of the *Act* by the landlord. Her claims with respect to monetary compensation do not meet the first hurdle in the test under section 67 of the *Act*. I find the tenants are not entitled to the amounts she has sought and I dismiss the tenants' applications for monetary compensation.

With respect to the tenants' application for an order that the landlord comply with the *Act*, and to set conditions on the landlord's right to enter as well as allow access to the rental unit and any other remedy under the *Act*, I note that this application is moot in that the tenants are required to vacate the premises with this tenancy at an end.

As the landlord has been successful in her application, I find the landlord is entitled to recover the \$50.00 filing fee.

Conclusion

I dismiss the tenants' application in its entirety.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants(s). Should the tenants(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$50.00. To give effect to that order, I allow the landlord to reduce the tenants' security deposit from \$600.00 to \$550.00.

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: June 10, 2015

Residential Tenancy Branch

