



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, MNR, MNSD, MNDC, O, FF
Tenants: MT, CNC, OLC, ERP, RP

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy and orders regarding repairs and emergency repairs.

The hearing was conducted via teleconference and was attended by the landlord; the female tenant; and her agent. The male tenant had been arrested just prior to the hearing and could not attend the hearing.

At the outset of the hearing the tenant's agent requested an adjournment because of the male tenant's incarceration. She submitted that the male tenant was the most familiar with the issues and that the female tenant could not remember all of the details sufficiently.

The agent also suggested that despite the incident that lead to the male tenant's arrest occurring last night the neighbouring tenant (other occupant of the residential property) did not call the police until today, likely in anticipation of restricting the male tenant's participation in this hearing.

The landlord submitted that he felt that an adjournment was unwarranted. He submitted that as the arrest is related to an incident between the tenants and the other occupant it shows the need for the determination of whether or not this tenancy should continue and that the determination should be made sooner, rather than later.

Residential Tenancy Branch Rule of Procedure #6.4 outlines the criteria I must consider before granting an adjournment. The Rule lists the following considerations:

1. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
2. Whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
3. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
4. The possible prejudice to each party.

While I accept that the male tenant would be able to contribute to the resolution of the matters related to this hearing, I find that the possible prejudice to the landlord for allowing the matter to

remain unresolved outweighs the contribution the male tenant could provide. I also note that the male tenant's actions that led to his arrest may provide an indication of escalation of the discontent between the two neighbouring tenants.

For these reasons, I dismiss the request for an adjournment. I did caution both parties that, if after hearing the testimony of both parties, I found a need for the male tenant to provide written submissions or there was a need to reconvene the hearing I would do so. I found no reason to do so.

While the tenants have applied for more time to apply to cancel a notice to end tenancy, they submit that they received the 1 Month Notice to End Tenancy for Cause on April 27, 2015 and note that they submitted their Application for Dispute Resolution on April 28, 2015.

Tenants are allowed up to 10 days from the day they receive a 1 Month Notice to End Tenancy for Cause. As the tenants submitted their Application for Dispute Resolution 1 day after they received I find the tenants have submitted their Application within the required time frames and additional time is not required. Therefore, I find the matter of more time to apply to cancel a notice to end tenancy is moot and I amend the tenants' Application for Dispute Resolution to exclude the issue of more time.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim on both parties Applications for Dispute Resolution regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenants' request for the landlord to complete repairs and emergency repairs and the landlord's claim for a monetary order for any monies owed or compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The other claims in both Applications are unrelated in that the basis for them rest largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenants' request for repairs and emergency repairs and the landlord's claim for monies owed or compensation. I grant both parties leave to re-apply for these outstanding claims.

The landlord had submitted evidence and a written statement from a previous landlord of the tenants. I advised the landlord that I would not be considering any of this evidence as it related to a previous tenancy and had no bearing on issues in the tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 6, 2014 for a 1 year fixed term tenancy beginning on September 1, 2014 for a monthly rent of \$775.00 due on the 1st of each month with a security deposit of \$385.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on April 24, 2015 with an effective vacancy date of May 31, 2015 citing the tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and the tenants have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardize a lawful right or interest of another occupant of the landlord.

The landlord clarified that despite have two distinct civic addresses he owns two houses that are on the same lot. He stated that these houses share a common driveway and storage shed. The landlord submitted both houses are rented out to separate tenants.

The landlord submitted that to his knowledge the tenants and the other occupant were getting along fine until February 2015. He submitted that the male tenant wrote him an email on February 2, 2015 asking the landlord to speak with the other occupant about having her guests park their car on the street instead of the driveway.

The landlord testified that shortly after this the other occupant complained to him that her lawnmower and vacuum were stolen and that she suspected these tenants. The landlord confirmed this was never proven. The female tenant testified the other occupant had asked to store her lawnmower in their yard.

The landlord submitted that during the month of March 2015 he continued to receive phone calls from both sets of tenants complaining about each other. He stated that he also received a complaint from another neighbour (non-tenant) regard the male tenant.

The landlord presented additional testimony and evidence regarding the tenants having a second car on the property that impeded the other occupant from having access to her section of the driveway. The landlord provided photographs of the parking at that time.

The female tenant testified that the other occupant had put a board with nails under the tires of the tenants' second car. The female tenant also testified that the other occupant was constantly yelling at her and the male tenant calling them names and taunting them.

The landlord submitted that he had provided a warning to both sets of tenants that should they not be able to resolve issues and get along it could result in ending the tenancy.

The landlord submitted that after the other occupant reported to him that the male tenant had been arrested for vandalism after causing damage to her windshield wiper on April 23, 2105 he issued the 1 Month Notice to End Tenancy. The female tenant did not dispute the male tenant caused this damage.

The landlord submitted that since the Notice was issued he is concerned that the male tenant's behaviour is escalating. The landlord also stated that the other occupant and her daughter are scared for their own physical safety. Although the landlord provided no evidence that either of the tenants had threatened any physical danger to either the other occupant or her daughter.

In regard to the events of the night prior to the hearing the female tenant submitted that the male tenant spray painted the other occupant's camera because she was pointing the camera directly into the tenant's rental unit window. The landlord submits the other occupant was advised by police to use a camera to gather evidence if the male tenant breached any conditions of his release and as such the camera was pointed at the her own rental unit.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) 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
 - iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. 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
 - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

Based on the testimony and evidence of both parties I find that the both sets of tenants seemed to be getting along fine until the tenants lodged a complaint with their common landlord about parking. I also find that in each of the events that the landlord has presented as cause to end this tenancy the other occupant either antagonized the tenants or raised unconfirmed suspicions against the male tenant (e.g. stolen lawnmower and vacuum). I also find that the landlord has presented no evidence to support the neighbouring tenant's alleged fears of physical danger.

However, despite being antagonized, I find, that causing damage to the other occupant's vehicle goes beyond acceptable behaviour and does warrant sufficient cause to end a tenancy for committing an illegal activity affecting the quiet enjoyment and security of the other occupant.

In addition, I note that the landlord had already warned the tenants that the issues had gotten to the point that he would consider ending the tenancy if there were further incidents. Therefore, I find the tenants and the other occupant were both sufficiently warned about the impact of their respective behaviours on the tenancy itself.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order

the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$385.00 in satisfaction of this claim leaving a balance of \$335.00 in the security deposit to be dispersed at the end of the tenancy in compliance with the requirements of the *Act*.

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

