Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FF, MNDC, OLC, PSF

Introduction

The tenants have filed an application seeking to dispute a rent increase that does not comply with an increase permitted by the Regulation, seeking an order to have a One Month Notice to End Tenancy for Cause set aside, an order to recover the filing fee, a monetary order for compensation for loss or other money owed, an order to have the landlord comply with the Act, regulation and or tenancy agreement and an order to have the landlord provide services or facilities required by the tenancy agreement or law.
Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This was a highly contentious hearing. The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar and fraud” to each other. The parties were more intent on arguing with each other than answering questions or presenting their position.

Preliminary Issues

The landlord stated that she was not provided the tenants original application for dispute resolution but only the amended version and then a second amended version which the landlord contends does not comply with Rule 2.11. The landlord stated that she was also not given the tenants complete hearing package as per rule 3.1. The landlord stated that all of the tenants applications should be “thrown out as frivolous and a waste of time”.

I am satisfied that the landlord was served the first and second amended application by May 26, 2015 and has had sufficient time for full answer and defence in keeping with the laws of Natural Justice. Although the tenant did not provide the landlord a copy of the original application, I do not find that the landlord was prejudiced in any way if all matters listed above in the introduction are heard.

Issue to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence

The tenants' testimony is as follows. The 6 month fixed term tenancy began on March 1, 2015. The tenants are obligated to pay $1175.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $587.50 security deposit.

The tenants stated that they seek to have the landlord comply with the Act, regulation and tenancy agreement for several different issues. The tenants stated that laundry was included with the rent. The tenants stated that as of April 20, 2015 the landlord has put a lock on the laundry room door and only allows access on Saturday's and Sunday's from 10:00 a.m. to 6:00 p.m., which the tenants' state is unacceptable. The tenants stated that there were told that they had unlimited access to the laundry. The tenants are seeking $335.58 for the costs incurred to have their laundry done at a laundromat and the cost to ride a bus over the time frame of April 20, 2015 till the end of July 2015.

The tenants are also seeking to dispute a rent increase of $89.00 per month. The tenants stated that the landlord is seeking an increase to cover costs of the utilities. The tenants stated that the tenancy agreement reflects that utilities are included and the rent increase is not valid.

The tenants stated that they dispute the landlords' position that they have caused significant noise or interference to the landlord or anyone else in the home. The tenants stated that they are quiet people and that they have not caused any disruption since the last hearing. The tenants stated that the landlord overreacted when she contacted the police on June 28, 2015 and that the police were sympathetic to the tenants' plight. The tenants stated that the only reason they knocked on her door and rang her bell on that date was to gain access to the breaker box as they had "tripped the breaker" and were concerned about safety. The tenant stated that he knocked on the door only once.

The tenants stated that they are actively looking for a new place but would like compensation for loss of access to the laundry and to have the rent increase set aside.

The landlords' testimony is as follows. The landlord stated that the tenants were told at the outset of the tenancy that laundry was to be used in a reasonable manner and was not unlimited. The landlord stated that the reason she required to put a lock on the door and limit the amount of time the tenants had access to the laundry was their unreasonable use. In addition the landlord stated that she has felt threatened by the male tenants' behaviour over the last couple of months. The landlord stated that the tenants are still using the laundry every weekend and have not incurred any costs and therefore should not be entitled to any compensation. The landlord stated that they still have access two days a week and that would continue for the term of the tenancy.

The landlord stated that she had the tenants sign an addendum to the tenancy agreement that stated the parties would review the utilities after three months. The landlord stated that she wasn't sure how much the tenants would use when they first moved in but having seen the bills spike, she felt justified in seeking an increase to cover those costs. The landlord stated that the utilities increase is not a rent increase and should not be construed as such.

The landlord stated that she "wants this nightmare to end". The landlord stated that the tenants, in particular the male tenant; is extremely aggressive in his behaviour and is violent. The landlord stated that the tenant violently and endlessly banged on her door and rang the doorbell for a day and half. The landlord stated that she wasn't home at the time but her homestay students were and became quite frightened by the male tenant. The landlord stated that the male tenant has banged on her door and rang her door bell so much on so many occasions, that she's put a sign on her door "do not disturb", but to no avail. The landlord stated the students are fearful of the male tenant and that this was just one example of the tenants' complete disregard for her privacy and quiet enjoyment.

The landlord stated that she has verbally warned the tenants about excessive noise on two occasions and given written notice on three occasions , yet the tenants have not changed their behaviour. The landlord stated that the tenants have parties, slam doors, play loud music to all hours of the night, yell and scream all the time and are verbally abusive towards her. The landlord stated this behaviour has been consistent and ongoing since shortly after the tenants moved in.

The landlord stated that she was unsuccessful in a previous hearing to have the tenancy end but despite going through the process, the tenants' behaviour has not changed. The landlord stated that she required the police to attend on June 28, 2015 after she had served her response evidence to the tenant. The landlord stated the male tenant was banging on her door and ringing her doorbell relentlessly as well as calling her cell phone repeatedly. The landlord stated that she heard the male tenant in a fit of rage yelling and screaming and pounding on the walls and doors. The landlord stated that the tenants were warned by the RCMP to avoid the landlord or risk the prospect of criminal harassment charges. The landlord stated that she has made multiple attempts to have the tenants change their behaviour but to no avail. The landlord stated she wants this tenancy to end as soon as possible

Analysis

Section 47 says a landlord may end a tenancy by giving notice to end the tenancy for a number of reasons. In the case before me neither party has supplied a copy of the One Month Notice to End Tenancy for Cause but both parties agree that the tenant received the notice on May 22, 2015 with an effective date of June 30, 2015. Both parties also agree that the notice was issued on the basis that the tenant has significantly interfered with or unreasonably disturbed the

landlord or other occupants and has broken a material term and, after receiving notice of the breach, has not complied with the tenancy agreement.

The landlord submitted the warning letters, the decision from the previous hearing as well as two written statements from her home stay students to support her position. The landlord also submitted a synopsis of the most recent incident involving the police. When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I found the landlords evidence to be clear, concise and credible. Although the tenant stated the landlord was just overreacting and that these incidences were not that significant, I do not accept his version of events and prefer that of the landlords'.

The tenant continually minimized the events and would continually revert back to loss of access to the laundry as opposed to addressing the noise issues. The tenant stated repeatedly that the landlord was overreacting and it wasn't as bad as she claims. In addition, the tenant stated that he had "all the proof on my phone" to prove she exaggerating, however the tenant chose not to submit it for this hearing.

The tenants' pattern of behaviour has not changed since the first verbal warning given by the landlord. The tenants have displayed a disregard for the landlords' requests to curb the amount of noise and disturbance that they create. It was made clear in the previous hearing that the tenants should correct their behaviour. However, after hearing the testimony of the parties, reviewing the documentation before me, I am satisfied on a balance of probabilities, that the tenants have continued to **significantly** interfere with and **unreasonably disturb** the landlord or other occupants on a **consistent and regular basis** and therefore the tenancy must end. The One Month Notice to End Tenancy for Cause is in full effect and force.

The landlord's oral application for an order of possession pursuant to Section 55 of the Act is granted. The tenants have paid the rent for the month of July. Although I find that the tenants have significantly interfered with or unreasonably disturbed the landlord or other occupants; I'm satisfied that the tenants do not pose a physical risk to the landlord or the other occupants and that the order of possession will take effect on July 31, 2015 at 1:00 p.m. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. As I have found that the tenancy is to end I need not address the second ground to which the landlord issued the notice.

I now deal with the tenants' claim of an invalid rent increase. The landlord has relied on the addendum to her tenancy agreement that states that utilities are to be reviewed after three months. A review does not constitute an arbitrary increase as the landlord sees fit. In addition, the tenancy agreement clearly states utilities are included and that the monthly rent is $1175.00. Also, the tenancy is not subject to an increase as it is only in its fifth month and the Act and regulations clearly outline an increase can only be given after 12 months and in accordance with the amount set forth in the regulations using the approved form. For absolute clarity and if on

the remote possibility the tenants over-hold the property, the rent is $1175.00 per month as it was from the start of the tenancy and continues to be that amount.

The tenants are seeking $335.58 as compensation for losing access to the laundry room. The tenants have failed to provide any proof of costs incurred. In addition, the landlord gave testimony that the tenants have continued using the laundry facilities throughout the entire time and have suffered no loss. The tenants did not dispute that fact. Based on the above and on a balance of probabilities the tenants have failed to provide sufficient evidence of any out of pocket costs and accordingly; I dismiss this portion of their application.

The tenants have not been successful in their application.

Conclusion

The landlord is granted an order of possession.

The tenants' application is dismissed in its entirety.

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: July 06, 2015

Residential Tenancy Branch