



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

In response to my decision dated June 10, 2015 on the original application of both parties, the tenants submitted a review application requesting a review on the basis of allegations of fraud as well as their provision of new and relevant evidence. As a result of that review application, the matter was returned for a reconvened hearing. This hearing was reconvened for the limited purpose of hearing the tenants' submissions and those of their advocate concerning the contract document provided by the landlord's witness and for the purpose of hearing any submission in reply that may be offered by the landlord. At the original hearing, a witness for the landlord testified that he moved the tenants to the landlord's residence. I accepted the witness' evidence at the original hearing, including his documentary evidence: a one page document purporting to be a contract between the landlord's witness and the tenants to enlist his moving services. On review, the tenants provided a written response to the evidence. Neither the tenants nor their advocate supplied these written submissions to the landlord prior to this reconvened hearing.

The original 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 this reconvened hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant and the tenants' daughter (co-tenant) both attended. They were assisted by an advocate. The landlord was assisted by two family members and called one witness. The landlord's witness testimony is central to the application for review and the limited reconvened hearing.

Issue on Limited Reconvened Hearing after Review

Has the tenant presented testimony or evidence that calls into question the veracity of the witness' testimony?

All Issues from Original Hearing

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

In the original decision dated June 10, 2015, I noted that a substantial amount of testimony was presented by both parties and that I considered all of the testimony provided in reaching my decision. At this hearing, the evidence to be considered is in relation to the testimony of the landlord's witness and the alleged mover for the tenants. On review, an arbitrator allowed a reconvened hearing for the limited purpose of hearing the tenants' submissions with respect to this witness testimony and the allegations of the tenants concerning the contract document provided by the landlord's witness. The landlord was provided an opportunity to respond to these submissions at this hearing.

By way of background, this tenancy began on March 15, 2015 as a month to month tenancy with a rental amount of \$1350.00 payable on the 15th of each month. The landlord continues to hold a \$600.00 security deposit paid by the tenants on February 21, 2015.

At the original hearing, the landlord testified (supported by photographic evidence) that;

- when the moving truck arrived April 1, 2015 at the residential premises, the tenants were not present at the residential property;
- the movers began unloading and it quickly became apparent that there were too many items to fit into the rental unit;
- the landlord 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 was worried the floors would cave in;
- a significant number of items belonging to the tenants were placed on the lawn/yard outside of the house.

On review, an arbitrator allowed a limited review with respect to the original hearing stating in the review decision,

I order that the original hearing be reconvened with the original arbitrator, as a conference call hearing, for the limited purpose of hearing the tenants' submissions and those of their advocate concerning the contract document provided by the landlord's witness and for the purpose of hearing any submission in reply that may be offered by the landlord.

I order that the arbitrator's decision and order of June 10, 2015 be suspended until the limited reconvene hearing has been completed. The Review hearing will be conducted by conference call on July 14, 2015 at 9:30 A.M. A copy of the Notice of Reconvened Hearing is enclosed with this decision.

(emphasis added)

I reproduce in its entirety the witness testimony as described in the original decision:

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.

On applying for review of this matter, the tenants submitted that the evidence of the mover was fraudulent. They submitted their request for a review on the grounds that they had new and relevant information to support this claim. The tenants' advocate wished to rely on a document titled, "Tenant's Response to Landlord's Supplemental Evidence" provided in support of their review application. I note that the tenants did not submit any documentary evidence for this hearing nor did the tenants serve any documents to the landlord in anticipation of this hearing.

The tenants and their advocate were permitted to present the information included in the written submissions for the review application in oral form at this hearing.

Particularly, the tenants' submissions were;

- both tenants testified that the landlord's witness was not the mover that they ultimately used;
- both tenants testified that the landlord's witness sold them moving boxes and that they decided not to hire him for the move;
- both tenants testified that another person moved them to the landlord's residence;
- both tenants testified that they had no receipts or invoice from the transaction with this other mover; and
- both tenants testified that they paid cash to the other mover.

Further, the tenants submitted, through their advocate that;

- the landlord's witness falsified the moving documents submitted for this hearing;
- that errors in the documents including blank spaces, incomplete totals and incorrect signatures supported that this document was not legitimate; and
- they *may* have signed for boxes but not for a move.

The tenants' advocate referred to his written submissions for the review hearing. In those written materials, the tenants and their advocate submitted that the person who ultimately conducted the tenants' move had spontaneously arrived at their door, introduced himself - stated that he had overheard the landlord's witness talking to them on the phone and felt sorry for them. Further, the tenants' advocates' submission was that the person who attended to the tenants' door offered to conduct their move and ultimately moved them to their new residence.

I note that, at the original hearing, the tenants did not provide this information in contradiction to the landlord's evidence and witness testimony. I also note that, during their testimony at the reconvened hearing, the tenants were able to provide little information with respect to the other mover. One tenant was not certain of his name and the other guessed but could not provide a last name. Both tenants took a very long time to answer this question. As well, he was not supplied as a witness for the tenants at this hearing.

The landlord's witness testified again at this hearing. He described details of both the first and second home of the tenants. He described details of other family members of the tenants who resided on the property. Specifically, he provided evidence about disabilities that Tenant CD and her son suffer from. I note that the witness was excluded from all other parts of the original and this second hearing but for his own testimony. The details provided by the landlord's witness were compatible with the evidence of the tenants themselves. The witness testified that he was upset to be accused of lying. He stated, "I am not going to lie for anyone." And explained there was no benefit to him to lie in these circumstances. He also indicated that he holds no ill will against the tenants but only wanted to provide accurate testimony and did have sympathy for the landlord's situation.

The landlord submitted that she mainly relied on the testimony and evidence from the original hearing, reproducing some of that evidence in oral testimony at this hearing. She testified that she had no other relationship with her witness. She testified that she believed the photographic evidence provided compelling evidence to support her claim. Her assistant testified that she believes the tenant is attempting to delay the dispute resolution process and the end of her tenancy.

Analysis

As stated in the original decision, the landlord has applied pursuant to section 47 of the *Act* to end the tenancy for Cause on several grounds including that the tenants ... have;

- 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.

At the original hearing, I found that the landlord had proven, on a balance of probabilities that the cause they have provided to end tenancy is valid and justified. At the original hearing, the landlord supplied sworn testimony, witness testimony, documentary evidence and photographic evidence in support of their application.

At the original hearing, I accepted the landlord's testimony, particularly with regard to the tenants' failure to take steps to improve the hazardous conditions identified and illustrated at the first hearing with photographic and documentary evidence.

At the original hearing, I accepted the witness' testimony in its entirety, stating that *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.*

Given the conflicting testimony, this case hinges partially on a determination of credibility. In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with other evidence, testimony and events that took place during this tenancy. The demeanor of the parties at the hearing, particularly the demeanor of the landlord and tenants, assisted in convincing me of the witness' credibility. The witness answered all questions asked of him in a calm and candid manner, and never wavered in his version of what happened. The witness' testimony was fully supported by the testimony of the landlord and the landlord's documentary and photographic evidence. In stark contrast, some of the tenants' testimony was hesitant and inconsistent, leading me to question the account presented by the tenants. I find that the testimony of the tenants provided to contradict the landlord's witness was not entirely believable. I find that the version of events provided by the tenants seems implausible and unsupported by any evidence.

I was also influenced by the indignation of the witness at having been recalled. As well, this witness was independent in that he had no previous relationship with either party and testified in a generally dispassionate, factual manner.

While the testimony of the landlord's witness (the mover) and his evidence provided some assistance in reaching my decision, it was not the sole determinant of the issues raised by the parties. I was also able to consider the testimony of the landlord, the testimony and admissions of the tenants', combined with the other evidence included but not limited to undisputed photographic evidence illustrating a massive amount of personal property inside and outside the landlord's rental property. While I, again, find the landlord's witness testimony to be trustworthy, it was the testimony of the parties themselves and the supporting documentary and photographic evidence that has persuaded me on a balance of probabilities that the tenants 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. Therefore, I find that the landlord's application for an order of possession based on this ground is successful. As stated in my original decision, based on this finding, I need not consider the other grounds under which the landlord applied to end this tenancy.

I also find, as in my original decision that the tenants have not sufficiently proven that they suffered a monetary loss as a result of the costs related to this tenancy nor have the tenants proven that they are entitled to an order to have the landlord comply with the Act. I reproduce here a portion of my analysis from the original decision:

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.

To summarize, the tenants' application to cancel the Notice to End Tenancy, that application is dismissed. The tenant's application for a monetary order is dismissed. With respect to the tenant's application for an order that the landlord comply with 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. That application is also dismissed.

As the landlord has been successful in this 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: August 7, 2015

Residential Tenancy Branch

