



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC; MNSD, MNR, FF

Tenant: CNC, MNDC, RP, RPP, LRE, RR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; a monetary order; and several other orders against the landlord.

The hearing was conducted via teleconference and was attended by the landlords; their agent; their legal counsel and the tenant. The tenant had arranged for witness, however, at the start of the hearing the tenant indicated that he had someone in the room with him but that she was not going to provide testimony. As such, I advised that if she stayed in the room I could not accept any testimony.

Later in the hearing the tenant wanted to call the person to provide testimony. The witness confirmed that she had been in the room the entire time and had heard the tenant's side of the conversation. As such, I would not allow the witness to testify.

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 regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the landlord's claim for a monetary order and the tenant's claim for compensation; to suspend or set conditions on the landlord's right to enter the rental unit; for return of his possessions; for repairs and for reduced rent. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The landlord's monetary claim and the tenant's other claims 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 portion of the landlord's claim for a monetary order and tenant's claim for compensation; suspending or setting conditions on the landlords' right to access the rental unit; for return of his possessions; for repairs

and for reduced rent. I grant both the landlord and the tenant leave to re-apply for their outstanding claims.

As the outset of the hearing the landlord confirmed that two 1 Month Notices to End Tenancy for Cause were issued. One was issued on June 27, 2015 and the second was issued on June 28, 2015. The landlord submitted that she had failed to check off whether the Notice of June 27, 2015 was issued under the *Residential Tenancy Act (Act)* or the *Manufactured Home Park Tenancy Act*.

The landlord submitted that to ensure the Notice was correct she issued the second Notice on June 28, 2015. Prior to any further testimony, I ordered, with agreement of both parties, that the Notice issued on June 27, 2015 was cancelled.

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 tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in August 2008 for a monthly rent of \$625.00. The parties also agreed the rent was reduced, pursuant to a previous dispute resolution decision to \$575.00 per month.

The parties provided into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 28, 2015 with an effective vacancy date of August 1, 2015 citing that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and/or put the landlord's property at significant risk; the tenant has 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/or jeopardize a lawful right or interest of another occupant or the landlord; and the rental unit/site must be vacated to comply with a government order.

In support of the Notice to End Tenancy, the landlord submitted a copy of court documents confirming that the local Regional District had submitted a claim to Supreme Court in June 2014 seeking court orders to enforce regional bylaws against the landlord. The orders sought by the District were, in essence, to ensure, in part, compliance with regional bylaws that would impact occupancy of certain buildings on the property, including the dispute address.

The landlord submits that the Regional District first raised the issue to the landlords in 2013 and that prior to any Supreme Court decision the landlords negotiated with the Regional District and now wish to comply with their orders.

The landlord submits that they requested and received confirmation from the Bylaw Enforcement Officer of the Regional District of their order to end the occupancy of several units on the property. The landlord provided a copy of this letter dated July 21, 2015. The letter reads as follows:

“It has been brought to the attention of the [Regional District] that four structures and a bus continue to be used as illegal dwellings. Specifically, these illegal dwellings are known as 3 (located above the duplex), units 4 and 5 (fronting [the roadway]), unit 6, also known as the “meat market,” and a bus (located next to the meat market).

According to the Electoral Area D Zoning Bylaw No. 3705, this property is zoned A-1 Agricultural Resource Zone. Section 4.1(1) of this bylaw indicates only one single detached residential use and one secondary suite is permitted for a maximum of two dwelling units. The residential use of a recreational vehicle or bus is specifically prohibited according to section 2.1 (2) (l) of this bylaw. Additionally, if units 3, 4, 5 & 6 were permitted by zoning, building permits for a change of use would be required under the [RD] Building Bylaw No. 3422.

Therefore, you are ordered to cease occupancy of the noted illegal dwellings no later than Saturday August 15, 2015.

The tenant submits that the letter allows for the landlord to obtain building permits to correct any discrepancies. The landlord submits that the sentence referred to by the tenant states that if the units were permitted by zoning they could apply for permits but the zoning does not allow for the units to exist as residential units. The tenant also submits that the landlords have not provided a copy of a court order that would require him to be evicted.

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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, or 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 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 has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- c) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

Based on the documentary evidence submitted by the landlord I find the landlord has established that they have an order from a regional government authority that requires the rental unit to be vacated.

While I acknowledge the letter with the specific language ordering the occupancy of this unit to end is dated after the 1 Month Notice of June 28, 2015 was issued, I find that there had been a dispute between the landlord and the regional district prior to the issuance of the Notice and prior to the issuance of the order dated July 21, 2015.

I also accept that the dispute between the landlord and the local Regional District had been ongoing since at least June 2014 but that it has been resolved and the landlord must comply with the order issued.

I am not persuaded by the tenant's argument that the landlord requires a court order to be able to end the tenancy based on this cause. Rather, I find that Section 47 specifically allows the landlord to end the tenancy when required to do so based on an order from a regional authority. I note that there is no need for a court order outlined in any of Section 47.

As a result, I find the landlord has provided sufficient evidence to establish they may end the tenancy as a result of an order from a regional authority.

While both parties provided testimony regarding the other causes identified in the 1 Month Notice to End Tenancy for Cause issued on June 28, 2015, I find that since I have determined the landlord is allowed to end the tenancy as a result of the order by the municipal authority there is no reason to address the other issues identified as cause to end this tenancy. Further, I have not recorded any of the testimony from either party in regard to those other causes.

During the hearing the tenant provided testimony that he suffers from a chronic illness that impedes his ability to engage in strenuous physical activity and noted that he would need some additional time to move out of the rental unit. The tenant provided medical documentation to confirm his illness. I note the effective date of the Notice was August 2, 2015.

Section 68(2) of the *Act* allows the director may order that a tenancy ends on a date other than the effective date shown on the Notice. As such, I order that the tenant must vacate the rental unit no later September 30, 2015.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **September 30, 2015 after service on the tenant**. This order must be served on the tenant. If the tenant fails 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 and I grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 08, 2015

Residential Tenancy Branch

