



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; LAT; FF

Introduction

This Hearing was scheduled to hear the Tenant's Application for Dispute Resolution seeking to cancel a *One Month Notice to End Tenancy for Cause* issued August 7, 2015 (the "Notice"); for an Order authorizing the Tenant to change the locks at the rental unit; and to recover the cost of the filing fee from the Landlord.

The hearing process was explained and the participants were provided with the opportunity to ask questions. Both parties provided affirmed testimony.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by registered mail, sent August 25, 2015.

It was also determined that the Tenant served the Landlord with documentary evidence on September 21, 2015. The Tenant acknowledged receipt of 40 pages of documentary evidence from the Landlord; however, he stated that the Landlord's second package of documentary evidence was not received until October 9, 2015. The Landlord did not provide a satisfactory explanation for late service of her second package. Therefore, I did not consider the Landlord's late documentary evidence and invited the Landlord to provide her oral testimony with respect to its contents.

Issues to be Determined

- Should the Notice be cancelled?
- Should the Tenant be authorized to change the locks?

Background and Evidence

This tenancy began on June 20, 2015. Monthly rent is \$450.00, due on the 20th day of each month. The Landlord did not require a security deposit from the Tenant.

At the beginning of the tenancy, the parties contemplated a possible "rent to own" agreement, but the Landlord decided not to go ahead.

Both parties gave testimony that was not relevant to the Tenant's Application. I have recorded only the relevant testimony in this Decision.

The Landlord gave the following testimony:

The Landlord testified that she is trying to sell the rental property, but that the Tenant will not allow her to show the rental property to potential buyers. The Landlord testified that her realtor gave the Tenant 24 hours' notice, by telephone messages, when he wanted to show the rental property and that the Tenant would not allow the showings. The Landlord's first package of documentary evidence included copies of e-mails between the Landlord and her realtor, and between the Landlord and her neighbour.

The Landlord stated that she initially tried to sell the house without a realtor and put up a "for sale" sign on the rental property. She stated that she was advised by a neighbour that the "for sale" sign was changed to "sold". The Landlord testified that she asked the Tenant if he put up the "sold" sign and that he acknowledged doing so. The Tenant told the Landlord that he took the sign down because people were driving into the rental property to snoop around.

The Landlord stated that she decided to hire a realtor to sell the property, who put up another sign on August 4, 2015. The Landlord testified that her neighbour sent her a text message on August 5, 2015, that the realtor's sign was spray painted with "sold" and "bitch" in red letters. The Landlord provided a copy of the defaced sign in evidence. The Landlord submitted that the Tenant had defaced the sign, but acknowledged that she could not prove it because there were no witnesses.

The Landlord testified that her realtor posted the Notice to the door of the rental unit on August 15, 2015.

The Landlord asked for an Order of Possession.

The Tenant and his witness gave the following testimony:

The Tenant acknowledged receiving the Notice on August 15, 2015.

The Tenant stated that he was never given proper written notice that the rental property was going to be shown to prospective buyers. He testified that he did not want strangers on his property while he was away because he didn't want people "going through (his) stuff".

The Tenant stated that he painted over the first sign because there were "mushroom pickers" coming on to the rental property and camping in the yard, eating food from the garden and using his hydro.

The Tenant testified that he was often “working at camp” and that he was not even there when the second sign was painted over. The Tenant’s witness testified that she and the Tenant left the rental property on August 3, 2015, and drove to another town. She stated that the Tenant went to camp for several days and left his truck with her while he was away.

The Tenant submitted that he believed that First Nations’ people or the “mushroom pickers” had spray painted the realtor’s sign because of issues between them and the Landlord.

The Landlord gave the following reply:

The Landlord testified that she has professionally worked with First Nations’ people in the past and that she asked them to “keep an eye” on the rental property because she does not live there.

Analysis

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for (at least one of) the reason(s) provided on the notice. In this case, the Notice provides the following reasons for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- 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.

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord’s property;
- adversely affect the quiet enjoyment , security, safety or physical well-being on another occupant or the landlord;
- jeopardize a lawful right or interest of another occupant or the landlord.

Section 29 of the Act provides:

Landlord's right to enter rental unit restricted

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In this case, I find that the Landlord did not provide the Tenant with due written notice, as required by Section 29(b) of the Act. There is no provision in the Act that the Tenant has a right to be present while the Landlord or her agent is exercising access.

However, I find that the Tenant seriously jeopardized the lawful right of the Landlord to sell the rental property by defacing the first “for sale” sign that she placed on the property. With respect to the second “for sale” sign that was erected by the Landlord’s realtor, I find it more probable than not that the Tenant, or someone permitted on the rental property by the Tenant, defaced the sign. Both parties gave testimony that the Tenant was interested in purchasing the rental property. The Landlord testified that the Tenant wished to enter into a “rent to purchase” agreement, but that the Landlord decided it was not in her best interest to do so. I find it probable that the Tenant was attempting to put up roadblocks so that the Landlord would not be able to sell the rental property.

I find that the Tenant seriously jeopardized the lawful right of the Landlord and that the Notice is a valid notice to end the tenancy.

Section 55(1) of the Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I find that the tenancy ended on September 19, 2015, and that the Tenant is overholding. Pursuant to the provisions of Section 55(1) of the Act, I hereby grant the Landlord an Order of Possession.

The tenancy is over and therefore the Tenant's request for an order that he be authorized to change the locks is dismissed.

The Tenant has been unsuccessful and therefore I decline to award him recovery of the cost of the filing fee.

Conclusion

The Tenant's application is dismissed in its entirety, **without leave to re-apply**.

The Landlord is provided with an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and 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: October 19, 2015

Residential Tenancy Branch

