Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

CNC, MNDC, FF, OLC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) filed on September 10, 2015, 2014 to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated September 02, 2015. The Notice to End was given solely for the reason: *Rental Unit must be vacated to comply with a government order – pursuant to Section 47(1)(k).* The tenant also applied for loss – orally amended in the hearing seeking compensation for *loss of quiet enjoyment.* I allowed the oral amendment as it was a fractional component of the original claim and did not prejudice the landlord.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via their submissions and their testimony. The landlord was represented by legal counsel (et al, the landlord). At the outset of the hearing the parties were afforded opportunity to resolve their dispute - to no avail. The landlord orally requested an Order of Possession if the Notice were upheld. Neither of the parties requested an adjournment nor presented witnesses or requested a summons to testify.

The parties acknowledged receiving the evidence of the other.

Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. On conclusion the landlord requested I bifurcate my Decision and render a separate / prior Decision solely respecting matters of the Notice to End. I declined the request in favour of a single Decision respecting all matters of the application.

In this type of application, the onus is on the landlord to prove the Notice to End was issued for valid reason. The tenant's burden is to prove on balance of probabilities; they suffered a loss of quiet enjoyment for which the landlord is responsible. The hearing advanced on the merits.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy? As a result;
Is the landlord entitled to an Order of Possession?
Is the tenant entitled to the monetary amount claimed?

Background and evidence

This tenancy began May 31, 2014 pursuant to a written tenancy agreement inclusive of a 1 page addendum. The agreement states the monthly rent is payable in advance of the first day of each month in the amount of $1300.00. The rental unit is a house with in-house garage divided into 2 rental units of which the applicant occupies the upper suite.

On September 02, 2015 the landlord gave the tenant a 1 Month Notice to End pursuant to Section 47(1)(k) of the Act accompanied by the details for the Notice to End. The landlord provided a registered letter from the City of Surrey, By-Law and Licensing Section, By-law Services Officer, GG, dated September 01, 2015 informing the landlord that contrary to the local government's zoning by-law, as the house is not owner occupied, the *secondary suite* of the residential property is deemed an *illegal dwelling unit*. The landlord argues the letter is a government order, as it states:

> *"The illegal dwelling unit must be removed from the property, which requires the following alterations:*
>
> - *All cooking facilities must be removed from the illegal dwelling unit and any openings for these facilities must be wall-boarded over.*
> - *The electrical breaker controlling the range receptacle must be removed and its spot blanked on the electrical panel.* - as written

The letter identified the contravention, the requirements for compliance, date of expected compliance one month later, and consequences for non-compliance. The letter also states an inspection would be conducted 1 month after the date of the letter to determine the status of the *illegal dwelling unit*.

The landlord testified the letter, or order, did not identify which of the 2 suites is the *illegal dwelling unit.* The landlord testified they exercised their discretion in determining the tenant's rental unit as the *illegal dwelling unit* and issued the Notice to End as per Section 47(1)(k) of the Act. The tenant argued that the City's letter did not identify their unit as the *illegal dwelling unit*; and irrespective the City's letter is not a government order to end their tenancy. The hearing questioned why the tenant's unit was selected for receipt of the Notice to End. The landlord testified as to 3 reasons,

- The downstairs tenant is the first tenant to occupy the property, is effectively a good tenant, and has seniority over the upstairs tenant.
- The landlord will be moving into the property.
- There is a disputatious relationship between the applicant and the landlord. The landlord provided evidence of the applicant's comments about the landlord, in online chatting/ postings on Facebook – which the landlord finds derogatory. The landlord read several Facebook posts by the tenant found unacceptable, and which the tenant did not dispute.

The tenant claims the landlord has – by their conduct – contravened their right to quiet enjoyment of the rental unit as afforded by Section 28 of the Act. The tenant claims they have been harassed by the landlord from the near outset of the tenancy with periodic interference. The tenant provided 6 pages of sequentially dated narrative beginning June 2014 consisting of a series of dates in which the landlord attended the rental property unannounced and without notice to the tenant.

The tenant submitted the landlord would periodically, at times often, come to the property without calling or notifying the tenant. The landlord would rearrange the

tenant's items, do repairs and work in and around the property, take photographs of the tenant's contents, criticize the tenant's choices, unreasonably instruct the tenant on *do's and don'ts,* block the tenant's access from the driveway, take the tenant's refundable deposit containers, discard the tenant's personal items, engage in arguments with the tenant about the use and contents of the in-house garage, demand of the tenant to allow access to the in-house garage without provision of notice to the tenant, intrude on the privacy of the tenant and their guest(s) and engage in conversations and instructions with the tenant over matters which the tenant claims were not urgent and could have otherwise been communicated less intrusively.

The tenant testified they experienced the landlord's conduct as unnecessary and disrespectful and that the landlord's appearance on the property would occur without forewarning or notice from the landlord. The tenant testified that defining incidents to the tenant included: being denied from obtaining a dog, despite originally neither the tenancy agreement nor the landlord forbidding the tenant from having a pet. The tenant testified the landlord told them they "hated her" and wanted her to immediately move as the tenancy was, "not working out". The tenant testified the landlord's words and conduct have caused them stress and emotional upset which she tries to avoid as she is prone to anxiety and depression. As a result, the tenant testified they had to obtain medication from their doctor. The tenant further provided a signed letter from their employer in support of the tenant's state of mind over the conflictual relationship with their landlord and that it has resulted in absenteeism by the tenant due to stress. In further support of their claim the tenant provided copies of 3 documents addressed to the Landlord each dated July 14, 2015 with ancillary evidence indicating the tenant mailed the documents on the same date by registered mail and that one of the documents was returned as unclaimed. The documents consisted of a document titled FINAL WARNING addressing the tenant's demand the landlord not disturb the tenant and only approach the tenant or the rental unit with 24 hours of notice as per the Act. The second and third documents were titled LOSS OF QUIET ENJOYMENT and LANDLORD"S RIGHT TO ENTER A RENTAL UNIT RESTRICTED, with each document containing the respective legislation pertaining to Sections 28 and 29 of the

Act. Each of the 3 documents effectively notified the landlord a repeat of the landlord's contravention of the cited legislation would resort the tenant to file for dispute resolution under the Act. Following the latter event, the tenant became mired in controversy with the City of Surrey over purported complaints against the tenant for water restriction by-law infractions and ultimately the City's letter of this matter. The tenant claims the landlord *engineered* complaints to the City toward the tenant to establish cause to evict the tenant. The tenant provided their communications with the City in respect to this allegation.

The landlord testified the tenancy agreement states the landlord has access to the in-house garage, "at any given time", which the landlord testified is the contractual agreement of the parties and therefore the landlord does not have to give the tenant written notice or forewarning of their attendance on the property as the landlord has a right under the tenancy agreement to access the in-house garage. The landlord further testified they did not tell the tenant they hated her. Also, they testified they are not the source of the tenant's stress, upset or anxiety; but rather, the tenant's use of prescription medication and their medical history. Again, the landlord provided a Facebook post stating the tenant used to be on medication for depression and they stopped taking their medication against the advice of the doctors. The tenant did not dispute the landlord's response. The hearing was not provided with additional response from the landlord to the tenant's allegations of intrusive conduct or the purported conspiracy to evict the tenant.

Analysis

The parties may access referenced publications at **www.bc.ca/landlordtenant.**

I have reviewed the testimony of the tenant and the landlord and I have reflected carefully on relevant matters presented and on all relevant evidence submitted. On the preponderance of the evidence, and on the balance of probabilities, I find as follows.

Tenant's application to cancel the landlord's Notice to End.

I accept the letter from the City of Surrey By-Law Services Officer is an order of the local government commanding the owner of the residential property to take certain action to *remove the illegal dwelling unit*. If I am to accept the landlord's argument respecting the City's order I would have to find the order commands the landlord to end a tenancy and evict a tenant for a contravention of the landlord – without fault of the tenant. I find the argument in this respect does not make sense; but moreover, I find no mention in the City's order the tenant's unit or *illegal dwelling unit* must be vacated for compliance with the order. Rather, I find the order of the City states the illegality of the dwelling unit must be addressed, by compliance with the course of alterations as are prescribed within the order. I find the landlord determined to interpret the City's order as stating a rental unit must be vacated to comply with the order – however, I see no evidence of this in the City's order.

As a result of the above, while I agree the City's letter is an order, I find it does not command the landlord to render the rental unit vacant. The landlord cannot rely on the City's order dated September 01, 2015 to end the tenancy pursuant to Section 47(1)(k). The landlord's notice is ineffective and not valid. **I hereby cancel** the Landlord's Notice to End dated September 02, 2015, with the result the tenancy continues until it ends in accordance with the Act. The landlord's request for an Order of Possession is **dismissed.**

Tenant's application: compensation for loss of quiet enjoyment

It must be known that every tenancy agreement has an implied covenant of quiet enjoyment. The Act spells this out under **Section 28** of the Act and a tenant's right to quiet enjoyment is a *standard term* of any tenancy agreement as prescribed by the Act and Regulations. In addition, **Section 5** of the Act states the Act cannot be avoided. Parties cannot contract out of the Act or regulations and that any attempt to reduce, remove, or otherwise affect the *standard terms* in a tenancy agreement is of no effect. I find that the landlord's tenancy agreement operates to establish rights to the landlord which inherently deny rights of the tenant under the Act. For example, the landlord

cannot establish a right to access to the rental unit, “at any given time”, nor establish a right to inspections of the rented property, “at any given time” – both as set out in the landlord’s tenancy agreement. The right of the landlord to enter the rental unit/property is guided by **Section 29** of the Act and is restricted: made conditional.

I find the tenant was forthright and thorough in testimony. I find the landlord’s testimony in response was minimal, and effectively solely advanced the landlord’s position they have a right under the tenancy agreement to access the garage, “at any given time”. Other than to deny telling the tenant they, “hated” them, the landlord did not dispute the tenant’s larger complaint: of the landlord’s displays of uncontrolled access of the rental property, beyond simply the garage - without notice or prior announcement. The landlord did not deny the tenant’s allegations amounting to unwarranted intrusions of privacy. As a result, I accept the tenant’s evidence as undisputed by the landlord.

It must be noted that the tenant’s evidence indicates that immediately after the tenant sent the landlord the 3 documents dated July 14, 2015, the tenant’s 6 pages of sequentially dated narrative no longer contains entries of intrusions by the landlord, with the tenant’s entries turning to issues with the City of Surrey. I find that after mid-July 2015 the tenant’s documents to the landlord appear having a pausing effect on the troubled tenancy relationship.

I find sufficient basis establishing that prior to mid-July 2015 the landlord entered the rental premises/property without notice or permission, disturbing the tenant’s quiet enjoyment. I find a monetary award is appropriate representing the nuisance and loss of quiet enjoyment to the tenant from June 2014 to July 2015. I take into account the length of time over which the situation existed and the seriousness of the situation. I find no basis to establish the landlord’s conduct occurred as an intentional infliction of mental suffering as purported by the tenant, although I find the landlord’s attempt to evict the tenant without cause as fractionally significant in this regard and in my determination. I grant the tenant a set award of $750.00. As the tenant was successful in their application they may recover their filing fee of $50.00 for a Monetary Order in the sum of **$800.00.**

Moving forward, the landlord is cautioned to comply with **Section 29** of the Act. The tenant is cautioned they cannot unreasonably withhold consent to the landlord entering the unit to satisfy the subject local government order.

Conclusion

The tenant's application, in relevant part, is granted.

The landlord's Notice to End **is cancelled and of no effect.**

I grant the tenant a Monetary Order under Section 67 of the Act in the amount of **$800.00**. The tenant can choose to collect on the Monetary Order through reducing this amount from a future rent payment and the Order becomes voided, **or**, if necessary the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 27, 2015

Residential Tenancy Branch