



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trusty Sales Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application: CNL, MNDC, PSF, RR

Landlord's application: OPL, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a two month Notice to End Tenancy for landlord's use. He also applied for a monetary award, an order directing the landlord to provide services and facilities and for a rent reduction. The landlord applied for an order of possession pursuant to a two month Notice to End Tenancy for landlord's use. The hearing was originally scheduled to be heard by conference call on September 28, 2016, but it was adjourned to be heard on October 28, 2016 for the reasons set out in my interim decision dated October 4, 2016. At the hearing the tenant said that he received documents from the landlord as directed by the interim decision, but he objected to the documents sent because the landlord sent more pages of evidence to him than he sent to the Residential Tenancy Branch. I proceeded with the hearing on the basis that I would deal with any discrepancy in the documentary evidence if and when it became apparent during the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for landlord's use dated July 25, 2016 be cancelled?

Is the tenant entitled to a direction to the landlord to provide services and facilities including cable and internet service?

Is the tenant entitled to a rent reduction?

Is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy began on March 1, 2014 for a six month term. The tenancy has continued on a month to month basis after the expiry of the fixed term. The tenancy agreement provided that cablevision was included in the rent and the agreement referred to "other" and contained the typed remark: "20.00 for INTERNET".

The landlord served the tenant with a two month Notice to End Tenancy for landlord's use. The Notice was dated July 25, 2016. It required the tenant to move out of the rental unit by September 30, 2016. The tenant was personally served with the Notice to End Tenancy on July 25, 2016. The reason for the Notice to End Tenancy was that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant submitted an application for dispute resolution on August 5, 2016. In the application he applied to cancel a Notice to End Tenancy for cause and he claimed a monetary award in the amount of \$433.00. On September 13, 2016 the tenant submitted an amendment to his application for dispute resolution. In the amended application he applied to dispute a 2 month Notice to End Tenancy. He increased his monetary claim to \$896.00 and he added a claim for a rent reduction and an order directing the landlord to provide services or facilities.

The landlord's representative testified at the hearing that the rental unit is on the ground floor of the rental property and the landlord requires the unit for occupancy by a resident caretaker or janitor for the building. The tenant submitted that the landlord already has a resident manager living in the building and the Notice was given in bad faith when the landlord is really trying to evict the tenant for other reasons and should have given the tenant a Notice to end his tenancy for cause.

The landlord's representative said that the landlord has no ulterior motive in giving the Notice and the other disputes raised by the tenant were not a factor in giving the Notice. The caretaker employed by the landlord is living off-site and waiting for rental unit to become vacant so he can move into the rental property. The tenant's unit was chosen because it is a ground floor unit close to the entrance and to storage; it is the unit that is most useful and practical for the caretaker to occupy.

The landlord has not served the tenant with a Notice to End Tenancy for cause. The tenant did not apply for an extension of time to dispute the Notice to End Tenancy for landlord's use. He did not file his amended application to dispute the Notice to End Tenancy until September 13, 2016.

The tenant has applied for relief because he claimed that the landlord has deprived him of both cable and internet services. The tenant said that in 2015 the landlord switched its cable provider from Shaw to Telus. The tenant said that the wiring systems in the rental property are inadequate to support Telus services to all the suites in the building. The tenant said that a Telus technician came to his suite and told him that Telus services cannot be installed in his suite because there are no telephone jacks. The tenant said that he has had to supply his own cable and internet service from Shaw from October, 2015 onwards. He claimed that the landlord is responsible for reimbursing him for his cable bills. He said that he pays \$59.36 monthly and as of September 13th the landlord owes him the sum of \$496.80. The tenant also said he has another reason related to his cell phone service provider that prevented him from switching his internet service to Telus.

The landlord's representative testified that the landlord switched cable providers. The landlord submitted as evidence a copy of a letter sent to the tenant dated July 12, 2016. In the letter the landlord the Telus technician was scheduled to attend the rental unit on July 9, 2016 to install internet and television services. The landlord said he was informed by Telus that the tenant refused to allow the necessary access in order for the work to be completed. The landlord said that the Telus technician was authorized to perform all the work necessary to install the services including any additional wiring that might be needed. The landlord's representative said at the hearing that there was absolutely no merit to the tenant's claim that Telus refused to install services because there were no phone jacks in the rental unit. The tenant has refused to accept the Telus service and would not allow the installer to perform the installation. The tenant insisted that his version of events with respect to the Telus technician was correct, but he did not submit any documentary evidence from Telus to confirm his position, apart from a copy of the technician's business card.

The landlord's representative noted that the tenancy agreement provided that the tenant could have internet services for a monthly fee of \$20.00. The landlord submitted copies of receipts for rent payments by the tenant throughout the tenancy. He said the receipts showed that the tenant has never paid for internet service since the tenancy began and the landlord has no obligation to provide the service without payment.

Analysis

The tenant has disputed the landlord's good faith intentions to convert the rental unit for use by a caretaker. The tenant was personally served with the Notice to End Tenancy on July 25, 2016. He did not apply to dispute the Notice until September 13, 2016, well outside the 15 day period within which the Notice may be disputed, but if the tenant's

application on August 5, 2016 can be considered to be an effective dispute of the Notice to End Tenancy for landlord's use, I find that the tenant has not established that the landlord does not intend in good faith to convert the unit for use by its caretaker. The tenant claimed that it was given because of the animosity the landlord's representative has for the tenant. Upon my review of the documents and testimony of the parties I concluded that the landlord's representative has acted professionally in his dealings with the tenant and it was the tenant's animosity towards the landlord's representatives that was most apparent. I find that the landlord has established that it does intend to convert the rental unit for use by the caretaker of the residential property and I therefore dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides that:

- 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 to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Notice to End Tenancy given by the landlord is in the proper form and complies with the requirements of section 52 of the *Act*. The tenant's application to cancel the Notice has been dismissed and the landlord has brought its own application to request an order of possession. I find that the landlord is entitled to an order of possession effective November 30, 2016 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

With respect to the tenant's application to require the landlord to provide cable and internet services, to claim compensation and to request a rent reduction. I accept the landlord's evidence that when the landlord changed service providers, the tenant refused to allow the technician to make the necessary changes to the rental unit so as to provide cable TV services. The landlord was obliged to provide cablevision under the tenancy agreement, but the landlord cannot be prevented by the tenant from changing providers. The landlord's evidence of rent payments shows that the tenant has never

paid for internet service and the landlord is therefore under no obligation to provide internet services to the tenant. The tenant's application for compensation, for a rent reduction and for an order that the landlord provide services and facilities is dismissed without leave to reapply.

The landlord filed its application for an order of possession on September 6, 2016. At that time the tenant had not applied to cancel the two month Notice to End Tenancy for landlord's use and the landlord was justified in bringing the application. I find that the landlord is entitled to recover the \$100.00 filing for its application. It may deduct the sum of \$100.00 from the security deposit that it holds, leaving a balance of \$250.00 to be dealt with at the end of the tenancy.

Conclusion

The tenant's application has been dismissed; the landlord has been granted an order of possession effective November 30, 2016.

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 25, 2016

Residential Tenancy Branch