



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated October 15, 2016 and setting the end of tenancy for November 30, 2016
- b. A monetary order in the sum of \$5000.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on October 15, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants by mailing, by registered mail to where the tenants reside on October 28, 2016.

Preliminary Issue:

The tenant requested that she be permitted to withdraw her monetary claim with liberty to re-apply. The landlord did not oppose this request. I determined it was appropriate to order that the monetary order be dismissed with liberty to re-apply for the following reasons:

- It was included in an Amendment filed on November 24, 2016 and the landlord was not given sufficient time to prepare.
- The landlord did not oppose the request.
- It was unlikely we would have sufficient time to hear all of the evidence necessary for an arbitrator to evaluate the claim.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated October 15, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on February 1, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$650 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - ...
 - jeopardize a lawful right or interest of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord seeks to end the tenancy based on the following evidence:

- The rental property is part of a strata property. The landlord testified she has received over 420 e-mails from the tenant complaining about the activities of the upstairs tenant. From October 3 to October 15 she received 48 complaint e-mails
- In addition she has received complaints from the upstairs tenants complaining about the conduct and noise of the Tenants. The landlord testified she has received a noise complaint from tenants who live in the upstairs rental property. The strata counsel has written determined the Tenants have interfered with the upstairs tenants.

- The strata council has advised the tenants to put their complaints in a weekly report rather than daily e-mails. .

The tenants responded as follows:

- The allegations she has sent 420 e-mails is not accurate and is not in evidence.
- She has been significantly disturbed by the conduct of the upstairs tenants. She has written to the landlord but the landlord failed to properly present their complaints and evidence to the strata council.
- The decision of the strata council is flawed as it is biased as they are in a conflict of interest.
- They were not given an opportunity to appear at the hearing before the strata council
- There is no evidence of the unsubstantiated evidence of the complaints of the upstairs portion.

Analysis:

The landlord has the burden of proof to present credible evidence to establish sufficient cause to the end the tenancy on a balance of probabilities as of the day the Notice to End Tenancy was served. .

I accept the landlord's submission that in some case a continual litany of complaints through e-mails or otherwise may amount to a significant interference or unreasonable disturbance. However, in this case I determined the landlord has failed to present sufficient evidence to establish cause to end the tenancy for the following reasons:

- The landlord failed to present evidence of all of the e-mails sent.
- The landlord failed to present sufficient evidence from the upstairs tenants to establish they have been significantly interfered with or unreasonably disturbed. The fact they made a complaint to the strata council is not sufficient evidence.
- The tenants have claimed against the landlord for a monetary order that the landlord acted negligently in failing to protect their interest and that amounts to a breach of the covenant of quiet enjoyment. The matter has been adjourned as there was not sufficient time to hear all of the evidence of the first scheduled date. The landlord failed to prove the complaints of the tenant are frivolous and without merit.
- There is no evidence the tenants have engaged in an illegal activity.
- The landlord failed to prove the tenants breached a material term of the tenancy.

Determination and Orders:

In summary after carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated October 15, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

While the tenants have been successful with their application I determined there was some basis for serving the one month Notice. I determined the tenants are entitled to recover half of the cost of the filing fee or the sum of \$50. I ordered that the landlord pay to the tenants the sum of \$50 such sum may be deducted from future rent.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: December 24, 2016

Residential Tenancy Branch