# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MT, ERP, RR, O, MNDC

Introduction

The tenants apply to cancel a two month Notice to End Tenancy for landlord use of property received November 30, 2016. They seek more time to make their application. They also seek an emergency repair order, a rent reduction and, by an amendment to their claim, a monetary award for breach of their right to quiet enjoyment of the rental unit.

This matter first came on for hearing on January 11, 2017 and was adjourned to ensure that the landlord and tenant evidentiary material could be received and considered. The hearing continued on January 18, at which time both sides confirmed they had received each other's material.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord have good grounds to end the tenancy under the terms of the Notice? Are the tenant's entitled to compensation for breach of landlord obligations under the law or the tenancy agreement? If this tenancy continues, are the tenants entitled to a repair order?

Background and Evidence

The rental unit is a three bedroom house in a small rural community in south central BC.

The tenancy started August 1, 2016 on a month to month basis. There is a written tenancy agreement. The rent is $800.00, due on the first of each month. The landlord holds a $400.00 security deposit.

Prior to this tenancy the landlord had lived in the home for twenty years and raised her family there. In 2016 she contemplated moving away for work. However she testifies that she did not obtain the full time work she had anticipated and so wishes to move back into the home; to work from there and to help care for her daughter in the home. She says that her belongings are presently in storage until a decision is made in this matter.

She says that she informed the tenants of her intention back in September. She had issued an earlier two month Notice to End Tenancy for landlord use of property in late September or early October. The tenants successfully applied to have that Notice cancelled. It was cancelled because the landlord had failed to date the Notice.

Immediately afterwards the landlord issue this, dated Notice.

The landlord has also issued a one month Notice to End Tenancy for cause in October. She says she voluntarily withdrew that Notice. It has not been challenged by the tenants or enforced by the landlord.

The tenant Ms. N. denies she was informed of the landlord's intentions back in September.

Unfortunately Ms. N. suffers from a condition whereby emotional stress causes her to experience "pseudo seizures." She says that the landlord has been harassing the tenants. As a result she says she has had to live somewhere else for three months in order to avoid the landlord and she wants to recover that cost.

She experienced an episode during this hearing, but was able to recover to contribute testimony later in the hearing.

The tenant Mr. N. testifies that it is his belief that the landlord's Notice has not been given in good faith because it came right after the tenants raised heating issues with her.

Mr. N. says that at the time of move in the home did not have proper heating. The landlord was to take care of that matter before winter came. The landlord was considering either a pellet stove or a gas furnace. At the time there was a pellet stove located, unattached, in the basement. Shortly after the start of the tenancy, the landlord informed the tenants that she intended to install a gas furnace in the home.

That did not happen. Instead the landlord installed baseboard heaters in the rooms. At first three were installed and then four others.

Mr. N. says the electric heat is not sufficient because some of the heaters are next to furniture that's too big to move in the small home and that such proximity poses a fire risk.

He says that the baseboard heating is costing the tenants much more money than heating with a gas furnace would cost.

He also complains that there is no central thermostat for the heat; each heater has its own intensity knob.

He says there is water accumulating in the window tracks and mould in the sills.

Mr. N. testifies that the landlord is persistently interfering with the tenants at the premises. He says once she called on the phone at 5:00 a.m.. She texts too much. Ms. N. "blocked" calls from the landlord but the landlord changed her email address to get around the block.

He says the landlord has come to the house ten or more times and has threatened to enter without permission in the tenants' absence though he agrees she has not entered without permission to date.

She has, he says, tried to evict them four times, including this Notice. From the record, those eviction attempts would appear to be this Notice, the prior two month Notice, the one month Notice for cause referred to above and a ten day Notice for alleged non-payment of August or September rent (a copy of the Notice was not produced by either side).

Mr. N. complains that the landlord once left a gazebo in the driveway.

He says this conduct by the landlord has exacerbated Ms. N.'s condition.

In response the landlord testifies that the baseboard heaters have been installed by an electrician and pose no danger.

The home was heated by electric heat when she lived there and, in her opinion, the tenants' electricity bills are not too high.

The original electrical heaters were removed as part of her heating upgrade. She says she had intended to install a pellet stove or a gas furnace but as it turned out that installation would require significant preparation work and permits, so she opted for the baseboard heating as an interim measure. She intends to install a gas furnace in the future.

She says it took a long time to install the heaters because her electrician had difficulty obtaining permission to get in from the tenants.

She admits she sent the tenants numerous emails and calls but that it was because they would not answer her inquries.

She says she sent the gazebo to the tenants for their benefit and use. It was in a box. She does not know how her delivery man delivered it.

She disputes that Ms. N. has been living away. She says the neighbours have told her that Ms. N. continues to live there.

She says she was reluctant to rent the home out but she had moved to a town three hours drive away for the school year and thought it the best option.

The landlord insists that she always gave proper notice before entering the property but was often declined.

Ms. N. stated that a September 28 email from the landlord had been sent to the wrong email address.

The landlord responded that she had given the tenants a written copy of it on September 28 and pointed to a witness statement to that effect.

## Analysis

The Two Month Notice to End Tenancy

The tenants do not require an extension of time to apply to cancel the Notice. The record shows that they had the filing fee for their application waived on December 2, 2016. That is the date the application is taken to have been made. That is well within the fifteen day period following receipt of the Notice in which a tenant must make an application.

I find that the tenants did receive the landlord's September 28 letter informing them she wished to move back in. They also received this same Notice to End Tenancy earlier and took it to a dispute resolution hearing. I am satisfied that they were full aware of the landlord's reasons for giving the two month Notice well in advance of this hearing.

Section 49 of the *Residential Tenancy Act* (the "*Act*") permits a landlord to issue a two month Notice to End Tenancy if that landlord intends in good faith to occupy the rental unit.

A landlord may not end a fixed term tenancy before the end of the term by use of such a Notice. However this tenancy is a month to month or "periodic" tenancy. Tenants under such a tenancy agreement run the risk of receiving a two month Notice. A tenant the subject of such a notice may give her own Notice to end the tenancy earlier. Such a notice may be as short as ten days. In all cases, a tenant is entitled to receive from a landlord the equivalent of one month's rent at the end of the tenancy and a rent rebate if she leaves earlier. Alternatively, a tenant may simply choose to forego payment of the last month's rent. That payment is in consideration of the fact that the tenant has had to vacate the premises through no fault of her own.

The *Act* also provides that if the landlord fails to occupy the rental unit within a reasonable time after the tenant leaves and fails to occupy the rental unit for at least six months, a tenant, on application, may receive an amount equivalent to two months' rent.

In this case I am satisfied that the landlord has a good faith intention to return and live in the home. She has explained her reason for renting in the first place, how her work plans have been changed and how her return fits with her future plans. The tenants are sceptical, but offer no substantive reason to doubt the landlord.

I uphold the Notice and dismiss that portion of the tenants' application seeking to cancel it. As a result of the Notice this tenancy will end on January 31, 2017. The landlord will have an order of possession for that date, as required by s. 55 of the *Act*.

The Repair Order and Rent Reduction

As this tenancy is ending, I decline to consider any repair order. It would be of no benefit to the tenants. Similarly, as this tenancy is ending there is no future rent to be paid and so the question of a rent reduction is redundant.

The Tenants' Claim for Compensation

The tenants have styled their claim as one for compensation for breach of their right to quiet enjoyment, however, the evidence and material filed show that their monetary claim is broader than that, including a claim for increased Hydro costs and money claimed to have been spent by Ms. N. for alternate accommodation. I have considered the tenants' claim for compensation in that broader aspect.

Heat

It is a landlord's essential obligation to provide adequate heat to a rental unit. I am satisfied that the parties knew that the landlord would attend to installing a heating system in due course after the tenants moved in.

I find that the heating source was likely to be a pellet stove or a gas furnace. However I do not find that it was a term of the agreement that the landlord was restricted to installing one or the other.

After the tenancy started the landlord expressed her inclination towards a gas furnace, but I find that statement did not create any obligation on her to do so. I find her explanation for choosing baseboard heating to be a reasonable one.

The baseboard heating system was installed by an electrician under permit and it may be assumed, with no evidence to the contrary, that it was installed properly and in accordance with the use it was designed for.

The tenants were concerned that items placed close to a baseboard heater could catch fire. They were also of the opinion that baseboard heating was not a proper method to use in an older home like this one. Those are opinions that require some expertise to make. In the absence of the opinion of a person shown to be qualified to determine the fire safety boundaries or proper applications of a baseboard heater, I cannot accept the tenants' concerns as fact.

The tenants claim that heating the home with electric baseboard heaters, especially in an older home like this one, cost them significantly more than had the home been heated by a gas furnace. That may be true or not, but it has not been shown by the evidence presented at this hearing. It has not been shown what the cost would be to heat this house or one like it by means of a gas furnace. Without that evidence the tenants' claim for increased heating costs must fail.

I must dismiss the tenants' claim for compensation under this head.

Stress and Alternate Accommodation

In order to establish Ms. N.'s right to seek compensation for having to live elsewhere because of the landlord's persistent interference it must be shown that she was suffering from a condition warranting such an extreme measure and that the landlord was conducting herself in an improper, aggravating manner.

In this case no medical evidence has been tendered to describe Ms. N.'s condition. Nor does it appear that she was acting on the directions of a health authority, like a doctor, in taking the steps she did.

Having regard to all the evidence I am unable to prefer the tenants' version of events; that the landlord was harassing them with calls and texts, over the landlord's explanation: that the tenants did not respond to her inquiries, leading to repeated inquiries.

For these reasons the tenants have not proved the essential aspects of this portion of their claim and I dismiss their monetary claim under this head.

Landlord Harassment

As stated above, the evidence regarding landlord harassment by calls and text is equivocal. I am unable to conclude, on a balance of probabilities that it was harassing behaviour.

Generally

It is most likely that water in the window tracks and "mould" in the sills is the result of condensation on the windows and the build up of dust in the air attaching to a moist sill. It is not abnormal in a home and requires an occupant to wipe the affected areas on

occasion. It has not been shown to be a defect in the home or otherwise to be the responsibility of the landlord.

I consider the gazebo issue to be inconsequential. It was an item given to the tenants for their benefit and it was delivered in a box handled by one man. The fact that the delivery person left it in the driveway should not have been an issue to complain about.

The landlord raised a variety of complaints about the tenants. She has not made her own application seeking relief regarding to any of them and so I refrain from listing them or dealing with them in this matter.

Conclusion

The tenants' application must be dismissed. The landlord will have an order of possession effective January 31, 2017.

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: January 24, 2017

Residential Tenancy Branch