



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDC, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to set restriction on the landlord's right of entry to the rental unit and to recover the filing fee for this application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on January 27, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance at the hearing.

At the start of the conference call the Arbitrator informed the Parties that the hearing will be focused on the Tenant's application to dispute the One Month Notice to End Tenancy for Cause dated January 15, 2018. The other issues in the Tenant's application, compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to set restriction on the landlord's right of entry to the rental unit are separate issues to the tenancy continuing or not.

Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says an Arbitrator may dismiss unrelated disputes within a single application. Consequently, I find that this hearing will deal with the Notice to End Tenancy only and the Tenant is at leave to reapply for the other claims in the application. The Tenants' applications for compensation for loss or damage under the Act, regulations or tenancy agreement, for the landlord to comply with the Act, regulations and tenancy agreement, to set restriction on the landlord's right of entry to the rental unit are dismissed **with leave to reapply**.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 24, 2017 as a verbal month to month tenancy. Rent is \$600.00 per month payable on the 1st day of the month. No security or pet deposits were required or paid for this tenancy. No condition inspection report was completed on move in.

The Landlord said that she issued the 1 Month Notice to End Tenancy for Cause dated January 15, 2018 for a number of reasons. The Landlord said the reasons are as follows:

1. The Tenant has been repeatedly late with rent payments.
2. The Tenant has engaged in illegal activity that may cause damage to the Landlord's property or has jeopardized the Landlord's lawful rights or interests.
3. The Tenant has caused extraordinary damage to the unit site or property.

The Landlord continued to say the Tenant was late with the rent three times since the tenancy started. The Landlord said the rent is due on the first day of the month and the Tenant paid the rent on August 3, 2017 for August, October 2, 2017 or October and November 25, 2018 or November, 2017. The Landlord said the Residential Tenancy Branch Guidelines say if a tenant is late 3 times it is sufficient to issue a Notice to End Tenancy for repeatedly late rent payments.

Secondly the Landlord said the Tenant grew marijuana on the property and in the green house which is illegal and may affect her insurance coverage and the value of her property. The Landlord said she made an inspection of the property in September, 2017 and found marijuana being grown by the Tenant on the property and in the green house. The Landlord said she asked the Tenant if he had a permit to grow marijuana. The Landlord said the Tenant did not provide the Landlord with a permit and did not respond to her request. As a result the Landlord phoned the Police and reported the Tenant's illegal marijuana. The Landlord said the Police came out and told the Tenant to cut the marijuana plants down and to stop growing marijuana. The Landlord submitted the RCMP constable's name and the file number as supporting evidence for the illegal activity. The Landlord also submitted photographs of the green house with marijuana growing in it. The pictures were taken during the property inspection in September, 2017. The Landlord said this is a reason to end the tenancy.

The Landlord continued to say the final reason on the Notice to End Tenancy is for damage to the rental unit. The Landlord said the Tenant removed fence poles, removed the frig, the stove and some cupboards. The Tenant also put in a new door in the green house. The Landlord said none of these changes to the rental unit were authorized by

the Landlord. The Landlord said she views these changes as damage to the rental unit and are grounds to end the tenancy.

The Landlord called a witness RN who gave affirmed testimony that the Tenant had removed the poles, the stove and frig and had altered the green house doors. The witness RN said she was the Landlord's mother and was originally part of the tenancy but is no longer a Landlord. The witness RN said she was aware of the condition of the rental unit at the start of the tenancy.

The Tenant said he had a conversation with the Landlord about the changes that he made to the rental unit and he asked the witness RN if she was part of that conversations about the broken stove, the frig not working and the removal of the fence poles. The Witness RN said she was not part of that conversation. The Tenant said he discussed there issues with the Landlord and he believed the Landlord was fully aware of the changes and in agreement with the changes he made to the rental unit.

The Tenant called his witness TG to testify. Witness TG said she was part of the tenancy and she was present at a meeting between the Landlord and the Tenant in which they discussed the changes that the Tenant made to the rental property. Witness TG said the Landlord was fully aware of the changes to the stove, frig, green house and that the fence poles were removed.

The Landlord said witness TG was lying and the meeting never happened.

The Tenant said the meeting happened and the Landlord was aware of all the changes.

The Tenant continued to say in a previous dispute hearing and resulting decision the late rent payment for November, 2017 and the resulting 10 Day Notice to End Tenancy for Unpaid Rent for November, 2017 was dismissed because the Tenant had paid the rent on November 1, 2017. The Tenant said the Landlord had refused to accept the rent because it was made out to the Landlord and to Witness RN when she was a Landlord too. The Tenant said he has paid the rent on time except for August when he paid it on August 3, 2017 and in October when he paid it on October 2, 2017. The Tenant said the Landlord's reason for ending the tenancy for late rent payments is not valid because he has been late only twice during the tenancy.

The Landlord did not dispute this.

The Tenant continued to say that he did grow marijuana on the property and in the green house and he believes the Landlord was aware that he was growing the plants. Further the Tenant said Police told him to cut the plants down and to stop growing any marijuana. The Tenant said he has complied with the Police order and there is no marijuana growing on the property now. The Tenant said he believes the Landlord is trying to evict him because she doesn't like him and this is just another reason to get him evicted.

The Tenant was asked if he had authorization from the Landlord to grow marijuana on the property. The Tenant said he did not have authorization to grow marijuana on the Landlord's property. The Tenant added that he has learned that he will get authorization for future tenancies.

The Landlord added that she was not aware that the Tenant was growing marijuana on the property until she inspected the property and then she phoned the Police as she was concerned that the marijuana would invalidate her insurance.

The Tenant said in closing that he pays his rent on time and the Landlord was aware of all the changes made on the property as well as him growing marijuana on the property. The Tenant said the Landlord is trying to evict him because she doesn't like him and that is not right.

The Landlord said the Tenant has been late with rent payments and is slow or non responsive to her request to do a tenancy agreement as ordered in the last hearing and the Tenant is damaging her property and putting her property at risk. The Landlord requested an Order of Possession.

Analysis

I have reviewed the evidence submitted and the testimony given at the hearing. It appears there are issues between the Landlord and Tenant and as such the parties will abide by this decision pursuant to the Residential Tenancy Act.

For a one Month Notice to End Tenancy for Cause a landlord must prove at least one of the reasons given for issuing the Notice to End Tenancy. In this situation both parties gave affirmed testimony and submitted supporting evidence of photographs and the police file number that the Tenant was growing marijuana on the property without a permit or license. Further, I accept the Landlord's testimony that she was unaware of the Tenant growing marijuana until the property was inspected in September, 2017. The Landlord then took reasonable action in requesting a grow permit from the Tenant and when the Tenant could not provide documentation to the Landlord the Landlord was entitled to call the Police to protect her property. The Landlord's concern about insurance issues when marijuana is being grown on a rental property is a valid concern and does create a significant risk to the rental property. Consequently I find the Landlord has established grounds to prove the reason of illegal activity that may damage the property or jeopardize the Landlord's insurance on the property. Further, I find as the Tenant does not dispute growing marijuana illegally on the property the

Tenant has not established grounds to successfully dispute the Notice to End Tenancy. I dismiss the Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated January 15, 2018.

Further as the Tenant was unsuccessful in canceling the Notice to End Tenancy, I find pursuant to s. 55 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on March 31, 2018.

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 filing fee which has already been paid.

Conclusion

An Order of Possession effective at 1:00 p.m. on March 31, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

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: March 21, 2018

Residential Tenancy Branch