



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAC, OLC, FF

Introduction

The tenants make both these applications. In the first they seek an order that the landlord comply with the law or the tenancy agreement, that they be permitted to change locks to the premises and that the landlord's right of entry be restricted.

In the second application the tenants seek the same relief as well as to challenge a one month Notice to End Tenancy for cause and for an order that the landlord provide a service or facility (keys to various heavy equipment).

At the first hearing I exercised my authority under Rule 2.3 of the Rules of Procedure and severed all claims but the request to cancel the one month Notice to End Tenancy. That is the most urgent item of the claim and the reason this matter was given a priority hearing date.

The landlord's first Notice is dated July 25, 2019 and claims that the tenants have engaged in illegal activity that has or is likely to damage the landlord's property and that the tenant or person permitted on the property has caused extraordinary damage.

The landlord issued a second Notice to End Tenancy for cause dated August 23, 2019. By agreement that Notice is disputed here as well. It alleges that tenants have failed to comply with an order under the legislation within 30 days after its effective date.

The listed 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 relevant evidence presented during this hearing show on a balance of probabilities that the tenants or persons permitted on the property by them acted so as to violate or infringe any of the lawful eviction grounds listed in either Notice?

Background and Evidence

The original landlord Mr. N.B. passed away February 9, 2019. The respondent landlord Ms. T.B. is the executor named in the late N.B.'s will. She is his daughter. Unless otherwise indicated, reference to "the landlord" in this decision is a reference to her.

The rental unit is a cabin with a workshop and various out buildings located on a large tract of remote, forested land in the interior of B.C. The parties disagree about how large the property is. The tenants say 320 acres. The landlord's counsel says 160.

The landlord in an unsigned written statement filed by her indicates there were two tenancy agreements: one signed by Mr. N.B. in October 2019 and one signed, assumedly on his behalf, by her on January 1, 2019.

The first, described as the "original tenancy agreement" is two pages of a 49 paragraph tenancy agreement, with an addendum page, dated October 1, 2018. It purports to have been made between Mr. S.B. and Ms. T.B. as tenants and Mr. N.B. as landlord for a tenancy starting October 1, 2018 at a monthly rent of \$300.00. It appears to be for a five year fixed term.

In her written statement the landlord alleges it was a month to month agreement and that the tenants wrongfully altered the document to indicate term of five years.

The second tenancy agreement filed by the landlord purports to be dated January 1, 2019 between Ms. T.B. as landlord and Mr. S.B. and Ms. T.B. as tenants for a rent of \$300.00 per month. The tenants dispute this agreement, saying it is a forgery.

Despite the landlord's statement that there were two tenancy agreements, it appears she has filed three.

The third tenancy agreement, marked as the "OctTenancyAgt" is not mentioned in her written statement. It appears to be dated October 1, 2018 between her as landlord and these two tenants, for a rent of \$300.00. Though the fixed term box is checked off, no fixed term has been described. It appears to have been signed by Mr. S.B. as one of the two tenants. There is an indecipherable signature in the box marked for the landlord to sign.

Counsel for the landlord made a preliminary objection that there was no tenancy at all. As it turns out the late Mr. N.B. wasn't the sole registered owner of this property. The title shows that he was a co-owner as tenants in common with the estate of the late Mr. O'K., who passed away about five years ago. The evidence at hearing unfolded to indicate that the two gentlemen owned two adjacent properties together and that title to both was held by them as tenants in common. It appears that Mr. N.B. had lived a rather reclusive life on this property for the years after his wife passed away and that Mr. O'K. had built a summer place for himself on the other property.

Counsel's objection is that these tenants could not maintain the lawfulness of their tenancy agreement because both the owners on title had not signed the tenancy agreement and that Ms. T.B.'s signing of a formal tenancy agreement later in January 2019 was an innocent mistake and ineffectual to create a tenancy (and was obviously unsigned by the O'K. estate).

In support of the two Notices to End Tenancy, counsel for the landlord produces photographs to show that the exterior cladding of a building on the property is missing. He says the tenants have removed it. He says the tenants have changed the code to the electric gate at the bottom of the property beside the municipal road about a kilometer from the house. As a result the landlord is prevented from entering the property. He says the tenants have added a padlock and key to the gate.

Counsel says that on August 6, 2019 a written notice to enter the rental unit was posted on the gate by the road. The entry was to be on August 16 but the applicant Ms. C.B, the tenants' daughter, contacted Ms. T.B. to deny entry until this hearing.

Counsel claims the tenants have cut down nine mature trees for profit and have milled them on the landlord's portable sawmill. He refers to photographs of three relatively

fresh looking tree stumps that Ms. T.B. discovered during an inspection in July 2019. He says the tenants have dug a large hole in the property for the use of a swimming pool and have used the lumber milled on the property to construct a deck around the swimming pool. There is a suggestion that the tenants are shooting at fridge outside on the property.

According to the tenant Mr. S.B., Mr. N.B. was well and living at the property with the tenants in the fall of 2018. He needed someone to help maintain the property, keep the road clear and maintain the water line and generally upkeep the property. He says there was only the one agreement and the others produced by the landlord are false and are forgeries. He says Ms. T.B. was around when her father Mr. N.B. was doing up the first agreement and that there was no mention of a Mr. O'K.

He says there has been no logging on the property. He has not cut down nine trees as alleged but has cut down and bucked three dead trees for firewood. He admits he has moved an above ground swimming pool onto the property and has cut away a portion of a bank in which to place the pool. He says he has not dug a hole. He says the landlord brought a child over to swim in the pool before this dispute started and he produces a text from her as corroboration.

Mr. S.B. admits constructing a wooden deck around the pool but says the wood came from his sister's property next door. His sister Ms. C.K. who has lived with her mother on a neighbouring property for 27 years, confirms that the cedar log came from her property, that she helped haul it up and that it was cut into lumber for the deck using the portable sawmill belonging to the late Mr. N.B. She confirms the tenants cut down only dead trees to use for firewood.

He denies creating a shooting range or shooting at appliances.

Mr. S.B. admits changing the code on the electric lock on the gate by the road. He admits there is a chain and a padlock on that gate but indicates they are not his, they are not locking the gate but merely slung over it with the padlock closed and he does not have a key.

The tenant Ms. T.B. testified. She says she only signed the one tenancy agreement; the one Mr. N.B. signed October 1, 2018. She confirms the lack of exterior cladding on the outbuildings existed from the start of the tenancy..

Analysis

The Tenancy Agreement

The landlord has produced a tenancy agreement dated October 1, 2018 between her father and these tenants and has indicated in her unsigned, written statement that the late Mr. N.B. signed it. It is the same agreement the tenants have filed. I find it to be the original tenancy agreement.

I appreciate the written opinions of the friends of the late Mr. N.B. regarding what they think he wanted regarding preservation of the property and what they thought the tenancy agreement might say. I find that the written agreement speaks for itself in that regard. I have no credible evidence upon which to conclude the document has been changed or altered by anyone or that it does not represent the agreement of the tenants and the late Mr. N.B.

The existence of the other October 1, 2018 tenancy agreement, listing Ms. T.B. as landlord, is troubling and was not explained at this hearing. It appears to have the handwritten portions in red ink, including her initials written in various boxes in the document. However, the signature purporting to be hers is in black ink. That discrepancy is also troubling and was not explained during this hearing either.

The last purported tenancy agreement put forward by the landlord does not reflect the fixed term tenancy that was created in the October 2018 agreement. The landlord would have executed this document while the late Mr. N.B. was alive, though quite possibly he was heavily medicated due to his medical condition. Counsel for the landlord says his client entered into this tenancy agreement for her father as a good daughter. The agreement is very close to the agreement presented by the tenants with some minor changes to the handwritten portions. In the face of the tenants' denial of this agreement I find that it has not been proved to be a valid, enforceable agreement between the tenants and Mr. N.B.

The Landlord's Preliminary Objection.

The basis of the objection appears to be that since all tenants in common did not sign the lease document it was ineffective to create a tenancy.

I think it is correct to say that such a lease as this could not have been registered as a conveyance of an interest in land under the land title system in the province because all owners did not sign it. However, invariably residential tenancy agreements are not intended to be registered at a land titles office.

Aside from the fact of the unregistrable nature of the tenancy agreement, no authority was presented for the proposition that the owner of an undivided one half interest in real property cannot lease his interest to a tenant.

In any event, it appears the matter is resolved by the evidentiary doctrine of “tenancy by estoppel.”

There is a general rule that a tenant is estopped from denying his landlord’s title, and a landlord from denying his tenant’s. Estoppel is a principle of the law of evidence which, in this case, precludes parties who have created a tenancy from denying their respective capacities as against one another. Thus the landlord cannot question the validity of the tenancy that he has purported to grant, and the tenant may not question the landlord’s title to grant it.

- R.E. Megarry, Q.C. and H.W.R. Wade, *The Law of Real Property* (3d ed. 1966) 651.

As well, the *Act* defines “landlord” to include a person, other than a tenant occupying the rental unit, who (i) is entitled to possession of the rental unit, and (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit. In this case both those conditions applied to the late Mr. N.B. when he entered into the October 1, 2018 tenancy agreement. He became a landlord under the legislation and was bound by its terms.

The landlord’s preliminary objection is dismissed.

The July Notice

I will deal with the claims in this Notice according to how they were set out in the Details of Cause portion of the Notice.

Cutting Down Mature Trees

I have reviewed the terms of the October 1, 2018 tenancy agreement. I have considered the circumstances the late Mr. N.B. and the tenants were in during the fall of 2018 when this agreement was made. I find that while the tenancy agreement permits the tenants to “use logs or trees as needed for any purpose [Mr. S.B.] feels fit”, that “purpose” must be for a purpose related to the general upkeep of the property and the buildings on it. The tenants are not entitled to harvest logs for sale or for milling and sale.

The evidence shows and the tenants admit that three trees, ranging from about 14 inches to 24 inches across at the stump, have been felled. The tenants argue that the trees were dead. I have examined the photos and agree that at least one of the trees was dead, as can be determined by the stump bark having separated away. The other two trees are not clearly living trees that have been felled.

Having regard to the wording of the tenancy agreement, and the fact that this property is at least 160 acres of forest, the cutting of the trees in question even if they had been live trees cut for profit, cannot be said to be extraordinary damage.

Dug a Hole

The tenants have dug a hole in the side of a hill as a place to use an above ground swimming pool. Whether the landlord used the pool or not, this is “damage” to the rental property. It is not damage of such a nature or extent as to be extraordinary damage and so it does not qualify as a ground for eviction. However the tenants are required by law to repair such damage when directed to by the landlord. They may be evicted if they don’t (see s.47(1)(g) of the *Act*).

While there has been no clear direction from the landlord to repair the damage it is clear from the fact of the Notice that is the landlord’s wish. To provide better clarity for the parties, I direct that within 120 days following this decision the tenants repair the excavated area used for the pool, by filling the area to its original contour.

Damaged Machinery

This claim, made in the Details of Cause, has been withdrawn.

Tenancy is Month to Month, The Landlord May End on a Month's Notice Without Cause

The *Act* does not permit a landlord to end a tenancy on one month's notice without providing cause.

In result, none of the grounds given in the July Notice have been established by the evidence. The Notice is hereby cancelled

The August Notice

In this Notice the landlord seeks to end the tenancy under s. 47(1)(l) of the *Act*, which provides that a landlord may end a tenancy on one month's notice when:

- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.

The order the landlord claims the tenants have failed to comply with is not an order described in ss. (1)(l). Rather it is the landlord's notice of inspection given on August 16, 2019.

As a result, the ground given for the August notice is not a valid ground and the Notice must be cancelled.

Conclusion

The tenants' application to cancel two Notices to End Tenancy for cause, dated July 25, 2019 and August 23, 2019 is allowed. Both Notices are hereby cancelled.

The remainder of the tenants' application is dismissed with leave to reapply.

I would note to the parties that a landlord has the legal right to enter onto the rental property and into the rental unit on proper notice. The tenants are free to pursue their request to restrict landlord entry but on the evidence before me I would not have restricted it. A tenant who wrongfully refuses a lawful entry can find themselves in

considerable trouble under the *Act*. A tenant is perfectly entitled to be present throughout any inspection by the landlord.

Secondly, it is not fully clear that the landlord presently has access to this property. If the tenants have altered the electronic code on the gate I recommend they provide the landlord with the new code immediately whether or not they think the landlord might share the code with others. If the tenants see a person other than the landlord entering without notice by using the code they are free to call the police. If they have padlocked the gate I recommend they immediately remove the padlock or provide the landlord with a key.

Thirdly, the tenancy agreement provides that the tenants may use the portable sawmill for business. In my view that means the tenants may mill other peoples' lumber. It does not permit them to mill logs from this property "for business" or for any other purpose but upkeep.

Last, the tenancy agreement provides the tenants are required to repair, maintain and upkeep a variety of equipment on the property. If the landlord wishes the tenants to perform this contractual obligation then obviously the tenants will need the keys to any keyed equipment. If the landlord has taken the means of running any of the equipment by, for example, removing and taking the keys, then the tenants obligation to repair, maintain and upkeep that equipment would be suspended.

There is no claim for recovery of any filing fee.

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: September 30, 2019

Residential Tenancy Branch