



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC MNDC FF

Introduction

This hearing dealt with application by the tenants to cancel the notice to end tenancy for cause and for a monetary order for compensation.

Issues to be Decided

Whether the notice to end tenancy should be cancelled?

Whether the tenants are entitled to a monetary order for compensation?

Background and Evidence

The tenants started their tenancy on August 1, 2008 with an obligation to pay a monthly rent of \$1300.00 due in advance on the first of each month. In August, the tenants started providing child care in the rental unit. The landlord investigated into the legality of operating such a service in the rental unit. Her investigation led to the conclusion that the tenants needed to obtain a license to operate such a service. Furthermore, the landlord's house insurance would become void with such an operation in the rental unit.

Since the end of September, the landlord and the tenants have had ongoing discussions about these issues without any resolution. On November 14, the

landlord served the tenants with a written notice to stop her child care service in the rental unit. The tenants failed to do so. On November 28, the landlord served the tenants with a notice to end tenancy for cause on these grounds: 1) the tenants or a person permitted on the property by the tenant has: (a) seriously jeopardized the health and safety or lawful right of another occupant or the landlord; and (b) put the landlord's property at significant risk; and 2) there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On December 9, the tenants filed an application to cancel the notice to end tenancy. As well, they claimed that during their tenancy, the rental unit had numerous deficiencies and the landlord had interfered with their quiet enjoyment of the rental unit by performing the necessary repairs without any notice. They are asking for compensation for the deficiencies and the interferences.

Analysis

Issue #1 – Whether the notice to end tenancy should be cancelled?

During the hearing, the tenants did not dispute that the care child service they provided at the rental unit was illegal. They said that since their receipt of an email dated December 16 from the senior licensing officer for Interior Health in the BC confirming licensing requirements for child care services, they had stopped their child care service in the rental unit.

The tenants disputed that they were not given a reasonable amount of time to correct this breach. They maintained that the first time the landlord asked them to “figure all this out” was November 14. I do not find the tenants’ assertion in this regard to be credible. The landlord said that starting in late September, she has had discussions with the tenants on the issues surrounding their child care service in the rental unit and on at least one occasion, she had asked her to stop

such service. I note a letter dated December 11, 2008 from the Childcare Resource and Referral Coordinator in BC states that the tenant attended her office in late October and during this meeting, the tenant was fully informed as to the licensing requirements for child care services and was given all the relevant registration forms and insurance information. Based on the above, I find that the tenants were given reasonable amount of time to correct their breach but failed to do so. As such, they had seriously jeopardized the lawful right of the landlord and put the landlord's property at significant risk.

Conclusion on Issue #1

Based on all of the above, I find that the landlord has established sufficient grounds to end this tenancy. I therefore dismiss the tenants' application to cancel the notice to end tenancy.

During the hearing, the landlord requested an order of possession. I find that she is entitled to an order of possession for the effective date of the notice which is December 31, 2008. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Issue #2 – Whether the tenants are entitled to a monetary order for compensation?

The tenants are asking one month's rent in the amount of \$1300.00 as compensation for the deficiencies in their rental unit and the landlord's interferences of their right to quiet enjoyment of their rental unit.

The tenants contended that there were numerous deficiencies in the rental unit. However, they also said that the landlord had been responsive to their requests for repairs. Furthermore, most of the deficiencies were satisfactorily dealt with by the landlord at the time of the hearing.

The landlord said that the rental unit was a newly renovated 100 year old house and the tenants were their first set of tenants after the renovation. As such, they relied on the tenants to notify them if there were any deficiencies.

Based on the above, I find that the tenants are not entitled to any compensation for deficiencies in their rental unit.

The tenants also contended that the landlord often entered their rental unit to do repairs without any notice. On one occasion, tradesmen working on landlord's house next door used their front yard for their equipments. On two occasions, the landlord's son-in-law came into their rental unit to do repairs without either notification or knocking. During the hearing, a witness, who was a friend of the tenants, testified that she was in the rental unit when the landlord's son-in-law entered without knocking. I note that while this witness was testifying, the tenant attempted to coach her by whispering to her.

The landlord said that they always phoned the tenants to check on the suitable time and date for doing the repairs. There had been occasions when the landlord's son-in-law was doing some repairs and found himself lacking in certain parts or equipments. In such cases, the landlord's son-in-law would tell the tenants he would come back the next day. The landlord's son-in-law denied ever having entered the tenant's rental unit without knocking and gave detailed accounts of the two occasions of alleged entering without knocking. The landlord added that the tenants seemed satisfied with the manner they handled all of the repairs and thanked them on several occasions for completing them.

Furthermore, the tenants only started complaining about the deficiencies and the manner they were handled after they received the notice to end tenancy. With respect to their tradesmen using the tenants' front yard for their equipments, the landlord said that they had notified the tenants one week before and the only complaint they received from the tenants was one week after the job completion.

The tenants' complaint at the time was that one of the tradesmen was rude to the tenant.

Conclusion on Issue #2

Based on the above, I find that the tenants have failed to prove, on a balance of probabilities, that there was any serious or substantial interference with their quiet enjoyment of the rental unit. The tenants are therefore not entitled to any compensation.

Dated: December 22, 2008