

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *CNC, MNDC*

Introduction

This hearing dealt with an application by the tenant pursuant to section 47 of the *Residential Tenancy Act* for an order to cancel the notice to end tenancy for cause. The tenant also applied for compensation in the amount of one month's rent, pursuant to section 67.

The reasons cited by the landlord for the notice to end tenancy are:

- The tenant is repeatedly late paying rent;
- The tenant has allowed an unreasonable number of occupants in the unit;
- The tenant has significantly interfered with or unreasonably disturbed the landlord and
- The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety and physical well being of other occupants and the landlord.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was represented by her daughter and the tenant was assisted by two advocates from an anti poverty organisation.

Issues

Does the landlord have cause to end the tenancy? Or should the notice to end tenancy be set aside? Is the tenant entitled to compensation under the *Act*?

Background and Evidence

The tenancy started on or about June 15, 2004. The monthly rent is \$600.00 due on the first of each month. There is no written tenancy agreement. The Notice to End Tenancy for cause dated January 31, 2009, instructs the tenant to vacate the unit effective March 01, 2009.

The landlord and his spouse live in a unit located adjacent to the rental unit. The landlord passed away in January 2009 and the tenant testified that shortly after his passing, the tenant had a conversation with the landlord's spouse. During that conversation, the landlord's spouse advised the tenant that her daughters would be coming to live with her and therefore she needed the rental unit for their use. The tenant stated that the notice to end tenancy was actually for landlord's use of the property and not for cause and therefore he was entitled to compensation in the amount of one month's rent.

The landlord testified that the notice to end tenancy was for cause, and has submitted into evidence written statements to support this. Rent receipts indicate that the tenant paid rent every month after the 23rd of the month.

The landlord feared for her own safety after she found out from the local newspaper, that the tenant's brother was wanted by police for assault and burglary. The tenant admitted that his brother spent some nights sleeping inside a car on the tenant's driveway.

The landlord has submitted into evidence letters from neighbours complaining about the condition of the yard and multiple visits from the police to the rental unit. The landlord testified that up to four trucks are parked on the shared driveway and the yard is filled with the tenant's discarded items including a freezer containing decomposing fish.

The landlord has given the tenant several verbal warnings to no avail.

The landlord's daughter testified that she and her sister were well settled in the lower mainland, and have no intention of occupying the rental unit.

Analysis

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle these matters, on the following conditions:

1. The tenant will vacate the premises by 1 pm on April 30, 2009.
2. If the tenant does not move out as promised, the landlord will serve an order of possession on the tenant.

With respect to the compensation issue, a tenant who has received a notice to end a tenancy under section 49 is entitled to receive compensation in an amount that is equal to one month's rent. Based on the verbal and documentary evidence, I find that the tenant was not served a notice to end tenancy under section 49 and is therefore not entitled to compensation. Accordingly, the tenant's application for compensation is dismissed.

Conclusion

I grant the landlord an order of possession effective April 30, 2009. If the landlord serves the order of possession on the tenant and the tenant fails 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.

Dated March 25, 2009.

Dispute Resolution Officer