Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated January 27, 2011 and to recover the filing fee for this proceeding.

At the beginning of the hearing the Parties confirmed that the name of the Landlord on the Tenant's application was incorrect and as a result, the style of cause is amended to show the correct name of the Landlord.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on May 15, 2005. At that time, the Tenant entered into two separate tenancy agreements with the former landlord (who passed away in November of 2009). One of the tenancy agreements was for the top floor of the rental property with a rental rate of $1,200.00 per month plus 65% of the utilities. The other tenancy agreement was for the basement of the rental property with a rental rate of $475.00 per month plus 35% of the utilities. This agreement further stated "basement, 4 room – no suite."

In previous proceedings between these parties heard on November 3, 2010, the Tenant applied to cancel a 10 Day Notice to End Tenancy. In particular, the Landlord sought to enforce a Notice of Rent Increase alleged to have been given to the Tenant in 2008, however, the Dispute Resolution Officer found (among other things) that the Notice of Rent Increase was of no force and effect and cancelled the 10 Day Notice. On January 27, 2011, the Landlord served the Tenant by registered mail with a One Month Notice to End Tenancy for Cause dated January 27, 2011. The grounds alleged on the Notice were as follows:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

- Tenant has assigned or sublet the rental unit without the landlord's written consent; and
- The rental unit must be vacated to comply with a government order.

In an e-mail dated January 24, 2011 the Landlord (who is the deceased owner's spouse) reported to the District of North Vancouver that the Tenant was subletting the basement of the rental property in contravention of a secondary suite by-law. In a responding letter to the Landlord dated January 27, 2011, the District of North Vancouver advised the Landlord as follows,

> "since this home is not owner occupied but occupied by two different tenants, based on the above regulations the cooking facility must be removed [from the secondary suite] and a final electrical inspection completed by February 28, 2011."

The Landlord argued that the Tenant did not have written permission to sub-let the basement and the tenancy agreement for the basement shows that this was specifically addressed at the beginning of the tenancy. The Landlord also argued that the zoning by-law in question prohibits the Tenant from subletting to another tenant. The Landlord further argued that her property insurance does not cover a secondary suite.

The Tenant claimed that he approached his former landlord in May of 2007 and advised him that he no longer needed the basement for his own use and asked the former landlord if he wished to rent it out. The Tenant said his former landlord did not want to rent it out but told him that he could rent it out if he installed a stove. The Tenant installed a stove and his sub-tenant moved in June 1, 2007. The Tenant said his former landlord was aware of his sub-tenant as he was at the rental property a number of times and would have seen her there. The Tenant also claimed that his former landlord installed a lock on the door joining the top floor to the basement floor. The Tenant said he had no idea why his former Landlord put "no suite" on the basement tenancy agreement as he said it was rented out as a suite at one time. The Tenant also argued that the current Landlord has ulterior motives in that she claims only one Tenant is allowed to reside in the rental property however on September 30, 2010, the Landlord tried to get his sub-tenant to enter into a new tenancy agreement with her.

The Landlord claims that the Tenant has also breached a number of material terms of the tenancy agreement. In particular, the Landlord claimed that she wanted an agent (ie. the next door neighbour) to go into the yard of the rental property to take photographs for her on January 13, 2011 but the Tenant refused to grant them access. The Landlord said she gave the Tenant written notice by e-mail on January 14, 2011 that the agent would instead come onto the property on January 15, 2011 but he again refused claiming that her agent would be trespassing if he did not have the Tenant's consent to enter onto the property. The Tenant admitted that he refused the Landlord's agent access to the property because he considers them "nosy neighbours" with whom he does not get along and he believed they wanted to take photographs of a pile of

aluminum outside of the yard that they could have accessed another way. The Tenant said he has no problem with allowing the Landlord's agents onto the rental property.

The Landlord also claims that the Tenant has unauthorized pets; one cat and one dog which she discovered in early 2010. The Landlord said the tenancy agreement contains a clause prohibiting pets without the written consent of the Landlord. The Landlord said the Tenant did not obtain written consent to have a pet and did not pay a pet deposit. The Landlord said she told the Tenant a number of times since March of 2010 to get rid of the pets and then gave him an e-mail on January 31, 2011 advising him to have them removed by February 28, 2011 but he has failed or refused to do so. The Tenant said his former landlord was aware that he had a cat when he moved in and marked on the condition inspection report, "pet deposit to come." The Tenant said he also inherited a small dog when his children came to reside with him permanently in February of 2009. The Tenant said his former landlord was aware of both pets as he would have seen them at the rental property on a number of occasions but never said anything about them. The Tenant denied that the current Landlord verbally asked him to remove the pets but rather he said she just complained about them.

The Landlord further claims that the Tenant was only supposed to have his 3 children living with him in the rental unit on a "1/2 time" basis but now they are adults and reside there permanently. The Landlord admitted that the tenancy agreement does not restrict the number of occupants that may reside in the top floor of the rental unit. The Landlord also admitted that she did not give the Tenant written notice that he was in breach of a material term of the tenancy agreement.

The Landlord also claimed that the Tenant or his children took a pile of aluminum from the rental property that belonged to her late husband. The Landlord said she contacted the RCMP about this and they advised the Tenant to return the aluminum. The Landlord said she later discovered the Tenant's children cutting and moving the aluminum so she sent her son to get it. The Landlord admitted that the aluminum had been stored outside of the yard of the rental property (on Regional District property) and had been sitting there under vegetation for many years. The Landlord also admitted that she later discovered that the Tenant had obtained written permission from the Regional District to take the aluminum. The Landlord further admitted that she did not give the Tenant written notice that he was in breach of a material term of the tenancy agreement.

The Landlord also claimed that the Tenant authorized repairs without her consent. The Landlord said that on two occasions, the Tenant reported to her that repairs were required and she would send a repair person but when a repair person would attend the rental unit, the Tenant would report more extensive repairs to them resulting in larger repair expenses than she anticipated or approved. The Landlord admitted that she did not give the Tenant written notice that he was in breach of a material term of the tenancy agreement.

The Tenant said he had no reason to believe repairs would be more extensive than he reported to the Landlord and argued that it was the responsibility of the repair people to obtain the Landlord's consent before making any repairs. The Tenant also said the house is old and needs many repairs and he tries to take care of as many of them as he can and only advises the Landlord about those repairs he cannot make himself.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

- The rental unit must be vacated to comply with a government order:

I find that there is no merit to this ground of the One Month Notice. The by-law regarding secondary suites indicates that the owner must reside in the rental property in order to operate a secondary suite. However, the letter of the District dated January 27, 2011 to the Landlord did not order that the basement suite be vacated but rather it only ordered the Landlord to remove cooking facilities from the secondary suite and to have the electrical panel inspected.

The Landlord also argued that the Tenant was not cooperating in removing the stove or allowing an electrician to enter the secondary suite by February 28, 2011 as Ordered by the District which could result in fines to her. The Tenant claimed that he was not refusing to allow the Landlord to comply with the Order but rather he was seeking an extension of the time limit to give his sub-tenant an opportunity to find other accommodations. The Tenant said he was told by the District that the owner had to make the request for an extension but the Landlord refuses to do so. In the circumstances, I cannot conclude that the Tenant has refused to comply with the government Order.

- Tenant has assigned or sublet the rental unit without the landlord's written consent.

I also find that there is no merit to this ground of the One Month Notice. In particular, I find that the Tenant did not have the written consent of the former Landlord to sub-let the basement suite however I find that the Tenant did have the verbal consent of the former Landlord to sub-let it in May of 2007 and that he continued to endorse that arrangement up until his demise in November 2009. Consequently, I find that the

former Landlord waived reliance on this section of the Act and the current Landlord cannot now rely on it to evict the Tenant.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I further find that there is no merit to this ground of the Notice. RTB Policy Guideline #8 defines a material term as one "that both parties agree is so important that the most trivial breach of it will give the other party the right to end the agreement." The Landlord provided no evidence that the Tenant's conduct complained of was in breach of a ***material term*** of the tenancy agreement. This ground also requires the Landlord to give the Tenant written notice that he is in breach of a material term of the tenancy agreement. The Landlord admitted that she did not do so for most of the alleged misconduct.

Notwithstanding these deficiencies, I find that the Landlord has not provided sufficient evidence of any breach of the tenancy agreement. In particular, I find that the Landlord did not give the Tenant a proper written Notice of Entry on January 14, 2011. Section 29 of the Act says that a Landlord must indicate on the written notice the date, time and reason for the entry which must be a reasonable reason. The Landlord argued that she did not need to give the Tenant written notice because her agents would not be entering the rental unit. However the Landlord admitted that the whole property was rented to the Tenant and therefore I find that the yard is not a common area but an area rented to the Tenant for his exclusive use and therefore the Landlord must give the Tenant notice to enter onto the property even if she or her agents will not be entering the rental unit.

I also find on a balance of probabilities that the former Landlord consented to the Tenant having a pet when he moved in and condoned him having pets until his demise in November 2009. Consequently I find that the former Landlord waived reliance on the term of the tenancy agreement that requires the Tenant to get written permission to have pets and as a result, the current Landlord cannot now rely on that term of the tenancy agreement to evict the Tenant.

I also find that there is nothing in the tenancy agreement that prohibits the Tenant from having his 3 grown children (or anyone else for that matter) reside with him in the top floor of the rental unit. I further find that there is nothing in the tenancy agreement that restricts the Tenant from removing a pile of aluminum that was abandoned by the former landlord approximately 10 – 20 years ago on land owned by the Regional District especially when the Tenant has gone through an approved, legal process for doing so. Finally, I find that there insufficient evidence that the Tenant acted improperly in reporting needed repairs to the Landlord. The Landlord is responsible under s. 32 of the Act for maintaining and repairing the rental property. Consequently, the Landlord is

also responsible for ensuring that trades people get *her authorization* before completing any repairs.

The Landlord also argued that the Tenant is repeatedly late paying rent, however, that is a specific ground that the Landlord could have checked off on the One Month Notice but did not do so. As the Tenant has had no notice that the Landlord was relying on that ground, I find that the Landlord cannot now raise it in this hearing. For all of the above reasons, I find that there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated January 27, 2011 and it is cancelled.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated January 27, 2011 is cancelled and the tenancy will continue. A Monetary Order in the amount of **$50.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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 02, 2011.

Residential Tenancy Branch