Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, OLC, O

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order allowing more time to make an application to cancel a Notice to End Tenancy - Section 66;
2. An Order cancelling a Notice to end tenancy – Section 49;
3. A Monetary Order for damage or loss under the Act - Section 67;
4. An Order for the Landlord to comply with the Act - Section 62; and
5. Other.

Issue(s) to be Decided

Is the Tenant entitled to more time to make an application to cancel a Notice to End tenancy?

Is the Tenant entitled to cancel the Notice to end Tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an Order that the Landlord comply with the Act?

Background and Evidence

The current tenancy began on January 1, 2010. Rent in the amount of $650.00 is payable monthly. On September 27, 2011, the Landlord personally served the Tenant with a 2 month Notice to End Tenancy for Landlord's Use of Property (the "Notice"). The Notice lists the following cause: the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The Tenant states that upon receiving the Notice, she was fully prepared to accept the end of the tenancy and did not file an application for dispute resolution to dispute the Notice. The Tenant states that following the receipt of two letters from her Landlord, the Tenant changed her mind. The Tenant argues that the receipt of these two letters were the exceptional circumstances that justify an extension of time to dispute the Notice as these letters are seen by the Tenant as the Landlord's attempts to evict her without complying with the Act.. The two letters referenced by the Tenant are noted to be letters from the Landlord's legal counsel. One letter dated September 27, 2011 warns the Tenant of a violation of the tenancy agreement in relation to the limit on occupancy, provides the Tenant with time to rectify the alleged breach, and informs the Tenant that if the breach is not rectified, the Landlord will pursue remedies against the Tenant. The second letter dated October 13, 2011 informs the Tenant that since the Tenant was not disputing the Notice, the Landlord was not pursuing any remedy in relation to the occupancy of the unit. It is further noted that the Tenant filed the application for dispute resolution on October 26, 2011. The Landlord's counsel submits that these letters are not exceptional circumstances but are letters that articulate the Landlord's position with respect to occupancy numbers under the Tenancy agreement. The Landlord's counsel submits that neither of these letters are eviction notices.

The Tenant states that because of her extenuating circumstances and her loss of quiet enjoyment of the property, she is entitled to compensation for loss in the amount of $8,000.00. The Tenant states that she faces extenuating circumstances with the end of the tenancy as she has accumulated several pets over the term of her current and previous tenancy, that housing in her area is limited by her having these pets and that alternative housing and moving costs are therefore higher. Because of these reasons, the Tenant states that the compensation for the Landlord ending the tenancy provided under the Act is insufficient to meet her losses related to the end of the tenancy and having to move to another home.

Legal counsel for the Landlord argues that the extenuating circumstances cited by the Tenant are not in relation to any act or negligence of the Landlord, are not necessary to

give effect to the rights obligations and prohibitions under the Act, are not in relation to any breach of the Act, regulation or tenancy agreement by the Landlord, that the Landlord has not caused the damages or loss being claimed by the Tenant and further, that the Tenant has not provided any evidence of mitigating those losses being claimed.

The Tenant further states that the Landlord breached her right to quiet enjoyment by attempting to end the tenancy over the course of several months. The Tenant states that the Landlord was constantly at her door, that she kept coming home to find letters and notices from the Landlord and that she felt that she was not allowed to live without worrying about another attempt by the Landlord to end the tenancy. The Tenant states that the Landlord went too far and greatly disturbed her quiet enjoyment. The Tenant states that no claim is being made that the Landlord went so far as to harass the Tenant in sending letters or posting notices on her unit door. The Landlord's counsel submits that the Landlord was acting to carrying out his rights to end the tenancy and that this does not constitute a breach of the Tenant's quiet enjoyment of the unit.

The Landlord requests an Order of Possession with an effective date of December 1, 2011 should the Notice be found valid.

Analysis

Section 49 of the Act provides that a tenant may dispute a notice, such as the Notice, by making an application for dispute resolution within 15 days after the date the tenant receives the Notice. Further, if a tenant does not make such an application within this time limit, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. Section 66 of the Act provides that a time limit established by the Act may be extended only in exceptional circumstances. The Tenant's reasons for not making the application within the time limit are not circumstances that can be seen as exceptional. Nothing stopped the Tenant from making the application in a timely manner. Receipt of the letters did not stop the Tenant from making an application, in fact, I note that the first letter referred to was received by the Tenant on the same date as the Notice. The Tenant simply

changed her mind. Accordingly, I dismiss the Tenant's claim for more time to make an application to cancel the Notice. As the Tenant did not make the application to dispute the Notice within the required time limit, I dismiss the Tenant's claim to cancel the Notice. I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and that the Landlord is entitled to an Order of Possession.

Section 28 sets out a tenant's entitlement to quiet enjoyment that includes a right to reasonable privacy and freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The Tenant claims that the actions of the Landlord in attempting to end the tenancy have caused the Tenant a loss of quiet enjoyment of the unit. While a Landlord has rights to end a tenancy under the Act, the question is whether the Landlord's actions in pursuing these rights caused an unreasonable disturbance of the Tenant's quiet enjoyment of the unit. Warning letters, breach letters and the posting of Notices to end tenancy are not only normal actions of a landlord, these are actions are required under the Act in order to effect an end of tenancy. Further, the content of the two letters sent to the Tenant do now show that the Landlord has attempted to evict the Tenant without following the Act. These are clearly letters associated with an alleged breach of the tenancy agreement by the Tenant and I find that the Tenant does not have a claim arising from these letters that the Landlord comply with the Act and I therefore dismiss the Tenant's claim that the Landlord must comply with the Act in relation to these letters. As the Tenant did not provide evidence of anything out of the ordinary in the actions of the Landlord or in the content of the letters and notices, I do not find that the Tenant has substantiated that the Landlord acted in a manner that caused an unreasonable disturbance of the Tenant's rights and I therefore dismiss this part of the Tenant's application. As the Tenant has not been successful with any of her claims, I make no order in relation to recovery of the filing fee and in essence the entire application is dismissed.

Conclusion

The Tenants application is dismissed.

I grant an Order of Possession effective 1:00 p.m. December 1, 2011 to the Landlord. The Tenant must be served with this **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.

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: November 22, 2011.

Residential Tenancy Branch