



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, RP, FF

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

At the outset of the proceeding the landlord's assistant requested an adjournment. In this regard the landlord, "M.S." had previously communicated with the Residential Tenancy Branch (the "Branch") by letter dated April 5, 2012, which was received by the Branch on April 10, 2012. In the letter, landlord "M.S." stated that as he would be "away on business" at the time of this hearing, he requested a change in the hearing date. It was not until early on the day of the hearing when an information officer left a voice mail message with the landlord's agent, informing him that the hearing would proceed as originally scheduled. In the result, the landlord's agent and the landlord's assistant stated that they were not fully prepared to address the 1 month notice to end tenancy for cause which had been issued to the tenant, or to fully respond to the various aspects of the tenant's application for dispute resolution. Further, the landlord's agent stated that the landlord's legal counsel was currently in possession of all of the landlord's relevant documentary submissions.

For her part, the tenant stated that she had not previously been informed of the landlord's request for adjournment, and that she had received no documentary submissions whatsoever from the landlord. In view of the long-standing nature of the dispute, the stress involved and efforts made to prepare for and attend the hearing, the tenant stated her objection to the landlord's request for adjournment.

Rule 6 of the Residential Tenancy Branch Rules of Procedure speaks to "Rescheduling and Adjourning of Dispute Resolution Proceedings." Rule 6.4 addresses **Criteria for granting an adjournment.**

I noted that this is the fourth hearing involving these same parties in recent months. Having considered the landlord's request, and in view of the reasons for the tenant's objection, I determined that granting an adjournment would not contribute to the

resolution of the dispute in accordance with the objectives set out in Rule 1 [objective and purpose]. Rule 1.2 speaks to **Objective of the Rules of Procedure**, as follows:

The objective of the Rules of Procedure is to ensure a consistent, efficient and just process for resolving disputes.

In the result, I denied the landlord's request for adjournment. The hearing then proceeded and both parties gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Three previous files have been opened in the dispute between the parties: 778829, 781051 & 785633. The tenancy began in November 2000. Currently, monthly rent is \$2,025.00, and it is payable in advance on the first day of each month.

The particular event giving rise to the opening of this fourth file was the landlord's issuance of a 1 month notice to end tenancy for cause dated March 20, 2012. The tenant filed an application to dispute the notice on March 26, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is April 30, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

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

There are no documentary submissions before me in evidence from the landlord and, as earlier noted, the landlord's agent and the landlord's assistant claimed they were not fully prepared to address the particulars giving rise to issuance of the notice.

During the hearing the parties exchanged views on some of the circumstances surrounding the broad dispute, and undertook to find areas of agreement in order to try moving forward positively in their landlord – tenant relationship.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 47 of the Act speaks to **Landlord's notice: cause**. Once again I note that there is no documentary evidence before me from the landlord. Based on the documentary evidence submitted by the tenant and the affirmed testimony of both parties, I find there is insufficient evidence to support the landlord's issuance of the notice to end tenancy for cause. Accordingly, the notice is hereby set aside and the tenancy continues in full force and effect.

Section 63 of the Act provides that the parties may attempt to settle all or a portion of their dispute during a hearing. Pursuant to this provision, discussion between the parties led to a partial resolution. In this regard, attention was drawn to 2 particular pages of the tenant's documentary submission (copies attached for convenience); these pages comprise an e-mail from the tenant to the landlord dated March 15, 2012, in which the tenant sets out a range of miscellaneous concerns about the condition of the unit and of the yard surrounding the unit. Arising from discussion around this document, specifically it was agreed as follows:

RECORD OF SETTLEMENT

- that by no later than May 31, 2012 the landlord and/or the landlord's agent will complete an inspection of the unit and the yard surrounding the unit in the tenant's presence;
- that the landlord and/or the landlord's agent will contact the tenant as far in advance as possible in order to schedule a mutually agreeable time to undertake the above inspection;
- that on whatever day is agreed to for the inspection, it will commence in the afternoon between 1:00 and 2:00 p.m.;
- that the aspect of the agreement set out immediately above acknowledges that the tenant must schedule a number of health-

related and/or other personal appointments in advance, some of which are not easily re-scheduled; it also acknowledges that the tenant will require a proper opportunity to make arrangements for a family member, friend or neighbour to look after her dog so that it is not present at the unit when the landlord and/or the landlord's agent attends the unit to complete the inspection;

- that the tenant undertakes to ensure that her dog is not present at the unit when the landlord and/or the landlord's agent attends to complete the inspection;
- that at the same time when the landlord and/or the landlord's agent attends the unit to complete the inspection, the following tasks will be completed:
 - i) the light switch will be repaired / replaced in the living room
 - ii) the allegedly improperly functioning upstairs refrigerator will be assessed, such that either repair or replacement will be undertaken within several days;
- that, further to the above, the tenant's 2 page e-mail to the landlord by date of March 15, 2012, will guide the parties in their joint assessment of the condition of the unit and the yard surrounding the unit;
- that the landlord and/or the landlord's agent will sand and repaint or re-stain the front door to the unit by no later than June 30, 2012;
- that on any future occasion when the landlord and/ or the landlord's agent plan to cut the grass, the tenant will be given at least 24 hours notice in advance, in order that she can ensure there are no dog droppings in the yard surrounding the unit.

Both parties are hereby ordered to comply with the terms of the agreement reached between them as set out in detail above.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment" in some detail. In summary, the tenant takes the position that the landlord has "harassed and intimidated" her by issuing "frivolous and vexatious eviction notices" and, as a result,

has breached her right to quiet enjoyment. Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant's right to quiet enjoyment has been breached as claimed. Specifically, prior to the notice which is the subject of this dispute, two previous notices to end tenancy have recently been issued and set aside. Further, the landlord was unprepared and presented no documentary evidence in support of the issuance of this most recent notice to end tenancy. Accordingly, I find that the tenant has established related entitlement to compensation in the amount of \$500.00, plus recovery of the \$50.00 filing fee. I order that the tenant may withhold a total of \$550.00 from the next regular payment of monthly rent.

Conclusion

The **notice to end tenancy is hereby set aside**, with the effect that the tenancy continues uninterrupted.

The parties are ordered to comply with the particulars of their agreement as set out in the **Record of Settlement**.

The tenant may withhold **\$550.00** from the next regular payment of monthly rent.

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: April 17, 2012.

Residential Tenancy Branch