Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants have applied to cancel a 1 Month Notice to end Tenancy for Cause and to recover the filing fee costs from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants testified that had made an evidence submission to the Residential Tenancy Branch (RTB) on July 20, 2012. The landlord had the evidence in her possession; it was given to her on July 18, 2012. The evidence was not before me and as the tenants had not served the RTB with the evidence at least 5 days prior to the hearing, their evidence was not considered. However, the tenants were at liberty to make oral submissions in relation to that evidence; which included some documents that had been submitted by the landlord.

During the hearing the tenants referenced a previous hearing and decision issued (file 247347.) During the hearing I reviewed a copy of that decision and explained that I would be bound by any finding previously made in that decision.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on June 28, 2012, be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 31, 2011, it was a fixed term that ended in February 2012. The tenancy has continued as a month-to-month tenancy.

The tenancy agreement supplied as evidence included a term that "all repairs will be the sole responsibility of the tenant due to amount of rent being charged." The agreement includes another term which gives the landlord permission to use a "mud room" any time with notice and that the landlord would have use of the carport until October 31, 2011.

Rent is $800.00 per month, due on the last day of each month. A deposit was not paid.

The parties agreed that the tenants had an option to purchase the home; they have not come to an agreement in relation to purchase.

The tenants confirmed receipt of a 1 Month Notice to End Tenancy for Cause on June 30, 2012. The Notice was issued on June 28, 2012. The Notice requires the tenants to vacate the rental unit on July 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenants have:

- been repeatedly late paying rent;
- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- put the landlord's property at significant risk;
- that the tenants have engaged in illegal activity that has, or is likely to:
    - damage the landlord's property;
    - adversely affect the quiet enjoyment, security, safety or well-being of another occupant of the landlord; and
    - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord and tenants agreed that rent payment is made by cash and that the tenants bring the cash to the landlord who then issues a receipt for the payment. The tenants made the following late rent payments that were due on the last day of the previous month:

- June 2, 2012;
- December 1, 2011;
- October 2, 2011, and
- September 3, 2011.

The tenants said that sometimes the landlord is not home when they wish to make the payment on the last day of the month. In June they had tried to pay on time, the landlord was not home, so they made the payment on June 2, 2012, after they arrived home from a short trip.

The landord stated the tenants know where she works and they could have gone to her workplace to make the payment due on May 31, 2012.

The landlord agreed payment in May 2012, was not late as the landlord had refused to accept the rent.

The landlord submitted that the delivery of fuel that the tenant had made to the home, using his truck, endangered both her and the neighbour's property. The landlord submitted a copy of an email from the agent of a local fuel company which indicated fuel must be hauled as required by the Transportation of Dangerous Goods standards. The agent said that he did not know what type of fuel the tenant might be using and that leaks could be costly; pumps must also meet certain requirements. The landlord believes that the tenant placed the property and her lawful right at risk when he hauled the fuel without the proper authority to do so.

The tenant agreed that he did back down a sidewalk in order to fill the heating oil tank with fuel he had hauled himself. The tenant has a Transportation of Dangerous Goods certification, but does not have any kind of licence to haul heating fuel. The tenant said he did this on one occasion only and will not haul fuel again.

The landlord was attempting to sell the home but removed it from the market on the advice of her realtor. The tenants have not kept the home in a state that allows it to show well to potential purchasers. The landlord provided photographs taken of the inside of the home which show some piles of belongings in several areas. The landlord said that the level of clutter, a dirty bathroom and the tenant’s small, but aggressive dog, have all contributed to the removal of the home from the market.

The tenants stated that the landlord’s realtor had sent them an email saying that the tenancy should end so that the home could be properly staged for sale.

The landlord supplied a photograph which showed a gas can sitting against the back of the house. The tenants have refused to remove the container. The tenants said that the cans are not theirs and that the landlord has never asked them to remove the cans. During the hearing the tenants offered to remove the cans from the property and the landlord agreed.

The parties agreed that the tenants have enclosed the carport. A February 5, 2012, letter submitted as evidence by the landlord indicated that the landlord was aware of the “makeshift garage doors.” The tenants confirmed that on June 9, 2012, the landlord gave them a written notice directing them to remove the carport enclosure. The landlord stated she had told the tenants in May, 2012, that the enclosure had to be

removed and again, win writing, on June 19, 2012. The parties did not agree as to whether the landlord had approved of the installation of doors on the carport; the landlord indicated that she had told the tenants they could do this if they owned the home.

The tenants were given a copy of an undated letter issued by a By-law enforcement officer with the City of Langford; the landlord stated she received this letter on June 29, 2012, and then gave a copy to the tenants. The letter confirmed that the permit required for enclosing the carport had not been obtained and that the carport was now in violation of Bylaw No. 1160. The letter also pointed out that parking on the pathway between the rental and the neighbouring home was prohibited. The landord was directed to "make every effort in correcting these bylaw infractions at your property to avoid further enforcement action."

During the hearing the tenants confirmed that no later than August 5, 2012, the carport will be restored to its original condition and that the doors the tenants have installed will be fully removed.

The landlord submitted that the tenants have engaged in illegal activity by installing the carport in the absence of permits; illegally hauling the fuel and trespassing on the sidewalk with their vehicle. The tenants have disturbed a neighbour as a result of the fuel delivery and the placement of a Danger sign on the carport doors.

The tenants have placed a lock on the carport doors and the landlord can no longer enter the mud room. The tenants said that the mud room use was to be for a limited period of time and that they expect notice of entry as the room enters directly into the home.

Analysis

The tenants have applied to cancel a Notice ending tenancy for cause issued on July 21, 2010; the effective date of the Notice is July 31, 2012. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenancy should end for the reasons indicated on the Notice.

In consideration of the reasons given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

> "To check; hamper. Hinder; infringe; encroach; trespass; disturb…to enter into, or take part in, the concerns of others."

I find that a significant disturbance would be one which was substantial or serious in nature and, that serious jeopardy must reflect a situation, as defined by ***Black's Law Dictionary***, that includes a "danger; hazard; peril." In order to find that the tenant's have engaged in activity that has placed the landlord's property at significant risk, I must find that the damage is substantial, serious and posed harm, danger or loss.

There is evidence before me that the landlord was aware of the carport doors in February 2012 and it was not until June, 2012, that the landlord gave the tenants written notice to restore the carport to its original condition. There is no evidence before me that the landlord is facing any penalty or action of the City; further, the tenants have committed to removal of the changes they made to the carport no later than August 5, 2012. If the tenants fail to restore the carport to its original condition that landlord is at liberty to take further action.

I find that the issues raised in relation to the delivery of fuel, the gas cans and trespass on the sidewalk are insufficient to end a tenancy. They occurred on one occasion and the tenants have said they were a one-time occurrence that will not be repeated. I accept the undertaking of the tenants and find that the tenancy will not end for the reasons given.

In relation to the sale of the home; it appears that the tenants do not keep the home to the standard desired by the landlord for sale and showings. The tenants cannot be evicted so that the home may be staged for sale purposes. However, it is reasonable to expect the tenants to allow realtors into the home and that they are unimpeded by belongings in hallways or piled in rooms. The landlord did not prove that an excessive number of belongings have been in the home during showing, but the tenants are warned that they should make reasonable efforts to ensure that the home can be fully viewed, in the absence of their small dog, which causes a disturbance to the realtor and potential purchasers.

I find that the term allowing the landlord access to the mud room is so vague as to be unenforceable. The tem indicated that the landlord had access, when notice was given; which I find does not confer any special access to that room. I find that the landlord has a limited right to enter the unit, as provided by section 29 of the Act, which I have appended to this decision. Entry must be for a reasonable purpose and if too frequent could result in a loss of quiet enjoyment of the home by the tenants.

In relation to the reason that the tenants have been repeatedly late paying rent, I have considered RTB policy which suggests:

> *Three late payments are the minimum number sufficient to justify a notice under these provisions.*

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

I find that there has been only 1 late payment made during 2012, and that was the result of an attempt to pay when the landlord was not at home. I find that the payments made in 2011 are not recent enough to allow the landlord to reply upon them to end the tenancy.

I find that the tenants are entitled to make payment by post-dated cheque, if that will assist in ensuring payments are made on time. A system that requires the tenants and landlord to meet on the last day of each month is difficult to manage and can easily result in inadvertent late payments.

As the tenants application has succeeded I find they are entitled to deduct the $50.00 filing fee from the next month's rent owed.

I have enclosed a copy of the G*uide for Landlords and Tenants in British Columbia* for each party.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued on June 24, 2012, is cancelled and of no force and effect. The tenancy shall continue until it is ended as provided by the Act.

The tenants may deduct the $50.00 filing fee from the next month's rent due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 26, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).