



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for the landlord's use of property and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Should the 1 Month Notice to end tenancy issued May 31, 2012 be set aside?
- 2) Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant affirmed that he did not submit additional information or evidence other than his application for dispute resolution. The Tenant argued that he has not been able to see the information provided by the Landlord on the CD and noted that the Landlord did not provide printed copies or a transcript of the items on the CD.

The Agent confirmed he compiled evidence, such as receipts, on the CD submitted into evidence and they did not submit a transcript of what is on the CD. He also confirmed they did not provide the Tenant with printed copies of items on the CD.

The parties agreed they entered into a verbal month to month tenancy agreement. Rent is payable on the first of each month in the amount of \$670.00 and the Tenant paid

\$325.00 as the security deposit. The rental unit is a basement suite approximately 900 square feet consisting of 1 bedroom, 1 bathroom, kitchen and living room area.

The Tenant seeks to have the 2 Month Notice cancelled because he believes the Landlord only wants him out of the unit now that the repairs have been completed. He questioned why he was required to stay at the rental unit after a motor vehicle accident occurred and a car drove into the wall of the house damaging his rental unit. He stated the Landlord required him to be there to let contractors into the unit to conduct the required repairs. He is seeking \$1,500.00 in compensation for having to be at the unit all day during repairs and having to sleep at his sisters during the evening.

When asked why the 2 Month Notice was issued the Agent stated they want to renovate the unit and then he would move into the unit. He submitted that he is older now and wants more independence. Upon further clarification on why the Landlord submitted copies of utility bills into evidence the Agent submitted that the relationship between the Landlord and Tenant has deteriorated and that neither he nor his mother, the landlord, understands the residential tenancy law. He alleged that approximately two years ago the Tenant harassed the Landlord into supplying internet and cable services. He confirmed the Landlord agreed to provide these services and did not seek a remedy for this issue sooner.

The Agent confirmed that they have not made application for permits to conduct renovations and they submitted evidence consisting quotes for work they would like to have done.

The Tenant submitted that he has done additional work to make the unit look nicer, such as painting the cupboards and now the Landlord wants them to move out for someone else to live there.

The parties agreed that the rental unit suffered significant damage when a car drove into the rental building and into the living room area. The parties further agreed that the Landlord requested the Tenant be home to provide the restoration contractors access to complete the repairs.

The Tenant submitted that he lost the use of the rental unit and could not sleep there while the contractors were installing the insulation and plastic. He asserted that even though he was there during the day he had to sleep at his sister's home during the repairs from mid February 2012 to the end of March 2012. As a result he is seeking compensation for loss of use of the rental unit in the amount of \$1,500.00.

Analysis

When a Landlord issues a Notice to End Tenancy for landlord's use of the property the burden lies with the landlord to prove the reasons for issuing the Notice.

In this case the 1 Month Notice to End Tenancy was issued for the following reasons:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse; and

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

When a Tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

Upon review of the testimony I favor the Tenant's submissions over the Landlord's whereby the Tenant asserts the Landlord had other reasons for issuing the 1 Month Notice. This is because the Landlord's Agent submitted additional evidence relating to this relationship deteriorating, copies of utility bills, and argued that the Landlord did not understand the *Residential Tenancy Act*. The Agent attempted to rely on issues that occurred two years ago to support his statement that the relationship deteriorating is grounds for end this tenancy. Furthermore, I find there to be insufficient evidence to prove the Agent's submission that he is intending to occupy the unit once the renovations are completed. Also, the Agent confirmed that no building permits have been issued or apply for to conduct renovations to the rental unit.

Based on the aforementioned, I find the Landlord has provided insufficient evidence to meet the two part test of the good faith requirement. Accordingly I cancel the 2 Month Notice to end tenancy issued May 31, 2012.

The evidence supports this rental unit suffered significant damage after a car drove into the wall of the rental unit and into the living room area in mid February 2012. The parties agreed that the Tenant was required to manage the contractor's access to the unit and that this incident affected the use of part of the living area of the unit.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Based on the evidence before me I find the Tenant has met the burden of proof to establish a loss of quiet enjoyment of his rental unit living room for a period of six weeks, in addition to having to do the Landlord's business of dealing with the contractors to arrange access to the unit to conduct repairs.

The evidence supports the Tenant continued to have use of the rental unit during the repair period, except for the living room area. Therefore, I award the Tenant compensation in the amount of **\$500.00** which is approximately 50% of the rent owed for the six week period while the unit was under repair.

The Tenant has primarily been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 2 Month Notice to end tenancy for landlord's use of property issued May 31, 2012, is HEREBY CANCELLED and is of no force or effect. As this Notice has been cancelled

the Tenant is no longer entitled to receive compensation in accordance with section 51 of the Act.

The Tenant has been awarded monetary compensation in the amount of **\$550.00** (\$500.00 + \$50.00). This one time award may be deducted off of the Tenant's next rent payment as full satisfaction of the monetary award.

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: July 09, 2012.

Residential Tenancy Branch