



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, CNL, FF / OPC, OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of 2 separate 1 month notices to end tenancy for cause / cancellation of a 2 month notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing, legal counsel for the landlord confirmed that the landlord seeks an order of possession arising from issuance of notices to end tenancy.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement entered into by the original landlord and the tenant, the fixed term of tenancy is from October 1, 2012 to May 31, 2013. The agreement is silent on the status of tenancy at such time as the fixed term ends. The original landlord did not attend the hearing, and there are no written submissions from her in evidence before me.

Monthly rent of \$950.00 is due and payable in advance on the first day of each month. A security deposit of \$475.00 and a pet damage deposit of \$950.00 were both collected.

The closing date for sale of the property by the original landlord to the current landlord was December 13, 2012. The "Agreement of Sale and Purchase" includes the following provision:

- (6) B. The Vendor will not remove any vegetation from the Property or log any trees on the Property from October 8, 2012 to the Time of Closing.

Following his purchase of the property, the current landlord issued 3 separate notices to end tenancy, the first being a 1 month notice to end tenancy for cause dated February 6, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 9, 2013. The reason shown on the notice in support of its issuance is as follows:

Tenant has caused extraordinary damage to the unit / site or property / park

The tenant filed an application to dispute this notice on February 13, 2013.

The landlord issued a second 1 month notice to end tenancy for cause dated February 25, 2013. A copy of this notice was also submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 31, 2013. The reason shown on the notice in support of its issuance is as follows:

Tenant has engaged in illegal activity that has, or is likely to:

damage the landlord's property

On February 28, 2013 the tenant applied to dispute this second notice to end tenancy for cause by way of amending her original application for dispute resolution.

The landlord issued a third and final notice to end tenancy, as follows: 2 month notice to end tenancy for landlord's use of property dated February 25, 2013, a copy of which was submitted in evidence. The date shown on this notice by when the tenant must vacate the unit is April 30, 2013. The reason shown on the notice in support of its issuance is as follows:

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.

In the amendment on February 28, 2013 of her original application for dispute resolution, the tenant also applied to dispute this particular notice to end tenancy.

During the hearing, through legal counsel the landlord stated his intention not to seek an order of possession on the basis of the 1 month notice to end tenancy for cause dated February 25, 2013. Accordingly, two notices to end tenancy therefore remain before me for consideration.

As to the 2 month notice to end tenancy for landlord's use of property, the landlord testified that his intention is to take possession of the unit and to move into it following the end of this tenancy. However, in the alternative to waiting for the 2 month notice to take effect, the landlord seeks to end tenancy earlier on the basis of the 1 month notice to end tenancy for cause dated February 6, 2013.

Again, the grounds identified in the 1 month notice dated February 6, 2013, are that the tenant has caused "extraordinary damage to the unit / site or property / park." In his submission the landlord specifically alleges damage, in part, to be as follows:

....the cutting of trees, harvesting of firewood against our will, damage to the ecology, and to the landscape of our lot.

Further to the 1 month notice dated February 6, 2013, by e-mail of the same date the landlord issued certain instructions to the tenant concerning what he considers is the active "harvesting [of] firewood from my lot in direct contravention of our wishes and as discussed at our previous meeting."

The landlord's claims related to damage are disputed in a letter written by a witness for the tenant and submitted into evidence. The letter is written by a property manager, who also testified during the hearing. The property manager managed the property for the original landlord and showed the property to the current landlord shortly prior to the time of sale. In her letter, the property manager claims in part as follows:

F. On December 31st 2012 I attended [the property] with [the tenant] and her husband while [the present landlord(s)] performed a thorough inspection of the house and property. No problems were seen and no concerns mentioned at that time.

G. On January 29th 2013 I was hired by [the tenant] for two hours to assist a qualified faller in the gathering of firewood from windfall and dead tree remains on the property.

It is my understanding that [the tenant] was given explicit permission from [the original landlord] to use the dead and fallen tree remains as she requested in order to provide herself with firewood for the winter. This permission was similarly given to all of the previous tenants. In fact, [the original landlord] left a chainsaw in the crawl space for the various tenants to use, just for that purpose. I myself serviced that chainsaw in the summer of 2012 readying it for such use.

I witnessed and was present for all of the firewood gathering that took place on the property on January 29th 2013. A qualified faller and buckler was hired by [the tenant] to perform the chainsaw work. Approximately two-thirds of a cord of firewood was gathered altogether. All of the wood gathered was from dead and fallen trees, and over half of it had been dead so long that the wood was largely rotten.

All appropriate cautions were taken in the process of gathering this firewood. Absolutely no live trees were harmed in any way. The majority of the firewood that was gathered was from windfall, though two very dead trees, both without any remaining branches, were felled and bucked up. Sections of each of these two trees were so rotten that major portions of them were unusable even as firewood. At no point during this activity were any of the buildings on the property in danger.

The tenancy agreement itself is silent around the management of trees and / or the harvesting of firewood on the property, and there are no addendums to the tenancy agreement in evidence before me that address these matters.

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

Part 4 of the Act broadly addresses **How to End a Tenancy**. Further, Residential Tenancy Policy Guideline # 30 speaks to “Fixed Term Tenancies,” and under the heading *Fixed Term Tenancy Agreement*, provides as follows:

The agreement must state the date the tenancy ends, and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date. If the parties do not agree that the tenant must vacate the rental unit at the end of the fixed term, and

if the parties do not enter into a new tenancy agreement, the tenancy continues as a month to month tenancy.

There is no indication on the tenancy agreement concerning either, whether the tenancy may continue as a periodic tenancy or for another fixed term, or that the tenant must vacate the unit at the end of the fixed term. Further, while neither party appears to want the tenancy to continue on a month-to-month basis after the end of the fixed term, there is no evidence of a formal agreement between them in that regard. Accordingly, I find that the tenancy agreement, as written, provides for a month-to-month tenancy following the end of the fixed term.

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, and provides in part:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Based on the documentary evidence and the affirmed testimony of the landlord, I am satisfied that the landlord has established a good faith intent to take possession of the unit, consistent with the reasons identified by the landlord on the 2 month notice to end tenancy dated February 25, 2013.

Section 55 of the Act speaks to **Order of possession for the landlord**, in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and

- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Following from all the above, the tenant's application to dispute the 2 month notice to end tenancy is hereby set aside, and I find that the landlord has established entitlement to an **order of possession**.

Section 53 of the Act speaks to how **Incorrect effective dates automatically changed**, in part as follows:

53(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The 2 month notice to end tenancy dated February 25, 2013, shows April 30, 2013 as the date by when the tenant must vacate the unit. As the fixed term tenancy ends May 31, 2013, pursuant to section 53 of the Act, as above, I find that the effective date of the notice is changed to May 31, 2013.

In relation to the landlord's undertaking to end tenancy pursuant to issuance of the 1 month notice dated February 6, 2013, section 47 of the Act speaks to **Landlord's notice: cause**, and provides in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

While there appear to be various reasons giving rise to mutual feelings of animosity between the parties, I find there is insufficient evidence that the tenant has caused "extraordinary damage" to the rental unit or the residential property. While all of the documentary evidence and testimony has been carefully considered, in making this finding I give significant weight to the testimony and documentary evidence of the tenant's witness all of which I find to be highly credible. The critical aspects of the tenant's witness' evidence are set out in some detail above. Accordingly, the 1 month notice to end tenancy for cause dated February 6, 2013 is hereby set aside.

On the basis of the tenant's success in having the above notice set aside, and in view of the tenant's having undertaken to amend her original application following the landlord's issuance of two additional notices to end tenancy, I find that the tenant has established entitlement to recovery of the **\$50.00** filing fee.

In relation to other miscellaneous compensation sought by the tenant which appears to include, but is not necessarily limited to, ferry travel, copying and faxing of documents, and registered mail, section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for recovery of certain additional costs is hereby dismissed.

Conclusion

The landlord's notice to end tenancy dated February 6, 2013 is hereby set aside.

The tenant's application to cancel the 2 month notice to end tenancy for landlord's use of property dated February 25, 2013, is hereby dismissed, and I hereby issue an **order of possession** in favour of the landlord effective **May 31, 2013**. This order must be served on the tenant. 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.

I order that the tenant may recover the **\$50.00** filing fee by way of withholding that amount from the next regular payment of monthly rent. Remaining aspects of the tenant's application for compensation are hereby dismissed.

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 14, 2013

Residential Tenancy Branch

