Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, MNDC, OLC, FF

Introduction

This hearing was scheduled to be heard on June 27, 2013 to deal with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and a 1 Month Notice to End Tenancy for Cause; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, Orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the originally scheduled hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Issues

I have amended the Application to exclude the occupant of the rental unit as a party to this dispute. The occupant appeared at the commencement of the June 27, 2013 hearing but was excluded as the landlord objected to his presence. The occupant was informed that he would be called if required to testify as a witness. The occupant provided his telephone number but was not called to testify during the June 27, 2013 hearing time.

Due to the multiple issues raised and hearing time constraints the Notices to End Tenancy were dealt with during the June 27, 2013 hearing time and the parties were informed that the remaining issues would be dealt with when the hearing reconvened on a later date. The originally scheduled hearing was adjourned and specific instructions were given to both parties to submit documentary evidence in support of their respective positions concerning the property rented to the tenant. Both parties submitted additional evidence to the Branch during the period of adjournment.

The hearing was reconvened on July 17, 2013 and only the landlords appeared. The landlords affirmed that their additional evidence was served upon the tenant in person and by posting the documents on the door of the rental unit. In the absence of evidence

to the contrary, I accepted that the landlords' additional evidence was served upon the tenant and I have considered the additional evidence that relates to determining the premises rented to the tenant. The landlords had also submitted other documentation during the period of adjournment that was unrelated to determining the premises rented to the tenant. I have not considered such additional submissions as I had expressly limited the additional documentation that I would accept for the reconvened hearing.

With respect to the additional evidence and submissions provided to the Branch by the tenant during the period of adjournment, the landlords stated that the tenant's documentation was not served upon them and submitted that it should be excluded from consideration. In the absence of the tenant at the reconvened hearing I found I was unable to confirm the tenant's evidence and submissions were served upon the landlords and I have excluded his additional evidence from consideration in making this decision.

The landlord orally requested that an Order of Possession be provided should the Notice to End Tenancy be upheld.

As the tenant did not appear at the reconvened hearing to present a basis for Orders for compliance or monetary compensation these portions of the tenant's Application were dismissed. Therefore, the remainder of this decision deals with the Notices to End Tenancy.

Issue(s) to be Decided

1. Should the Notices to End Tenancy be upheld or cancelled?

2. If the Notices to End Tenancy are upheld, are the landlords entitled to an Order of Possession?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy to commence January 1, 2013 and expire December 31, 2013. The tenant is required to pay rent of $2,100.00 on the 1st day of every month.

The rental unit is located on a rural parcel of land that has a house, barn, horse paddock and riding ring. The parties are in dispute as to the premises rented to the tenant and the portion of the property the tenant is entitled to use under the tenancy agreement. The tenant is of the position he rented the entire property except for the

barn. The landlords are of the position the tenant rented the house with the immediately adjacent front and back yard only.

During the hearing of June 27, 2013 I noted that neither party had provided me with a copy of the written tenancy agreement. The landlords claimed to have lost their copy of the written tenancy agreement. The tenant stated that he had a copy of the written tenancy agreement. After hearing the landlords' reasons for ending the tenancy and the tenant's responses, I adjourned the hearing and ordered the tenant to submit a copy of the tenancy agreement to the Branch and the landlords. A tenancy agreement was submitted to the Branch by the tenant during the period of adjournment; however, the landlords denied receiving a copy at the reconvened hearing. At the reconvened hearing, I read portions of the tenancy agreement to the landlords in an attempt to verify the accuracy of the agreement submitted by the tenant. The landlords confirmed that the generic tenancy agreement published by the Residential Tenancy Branch was used to prepare the tenancy agreement; however, the landlords indicated that they could not recall the content inserted into the document. The landlords took the position that they could not confirm any of the content or terms without first seeing the tenancy agreement. In the absence of the tenant at the reconvened hearing and the landlords' denial that they were served with a copy of the tenancy agreement the agreement submitted by the tenant was excluded from further consideration as indicated in the preliminary matters above.

In support of the landlord's position that the rented premises consisted of the house and adjacent front and back yards only, the landlords provided the following evidence:

- A copy of a rental advertisement for the property posted on Craigslist on October 31, 2012;
- A copy of a hydro bill for the property in the male landlord's name dated May 29, 2013;
- A statement from a neighbor of the property indicating he has keys to other portions of the property as was responsible for maintaining the property except for the area immediately adjacent to the house;
- A printout showing the property has been classified as farm property with BC Assessment; and,
- Verbal testimony from the male landlord that:
    - Prior to the commencement of the tenancy, prospective tenants were divided into two groups and two different types of showings were set up, depending on whether the prospective tenant indicated an interest in renting the house only or the house, barn and paddocks. The male

landlord would show the house to the prospective tenants interested in renting the house only; whereas, the landlords' daughter would show the property to people interested in renting the farm portion of the property.

- The tenant had responded to the landlord's advertisement indicating he was interested in renting the house. The house and immediately adjacent front and back yards were shown to the tenant by the male landlord pursuant to the above-described practice.

On May 28, 2013 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord subsequently determined that the landlord could not end the tenancy with the 2 Month Notice that was served since the parties have a fixed term tenancy. I did not hear further submissions concerning this Notice.

On June 3, 2013 the landlord issued a 1 Month Notice to End Tenancy for Cause with an effective date of July 31, 2013. The 1 Month Notice indicates several reasons for ending the tenancy, 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
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlords submitted the reasons for issuing the 1 Month Notice are as follows:

1. The tenant rode his ATV in the riding ring which caused significant damage. I heard that the sand in the riding ring must be kept level so as to not jeopardize the health and safety of the horses and riders that use the riding ring. On June 11, 2013 the landlords hired a person to repair and level the riding ring so that

the landlords could use it for riding horses. The landlords have since brought several horses on to the property.
2. The tenant parked his truck on the septic field.
3. The tenant or the occupant have played loud music since May 28, 2013 and swore at landlord while she was maintaining the property.
4. The tenant requested notices of entry be provided for the landlord to enter the property even though the farm portion of the property is not for the tenant's use.
5. The tenant left garbage strewn about the property.

The tenant provided the following responses to the landlords' assertions:

1. The tenant rode his ATV all over the property, including the riding ring, on multiple occasions during the tenancy, as he is entitled to use the property under the terms of his tenancy agreement. A riding ring is made of sand and requires frequent maintenance even when horses use it. The tenant is afforded until the end of the tenancy to restore the riding ring to its original condition. The landlords are not entitled to bring horses on the property during the tenancy as the property is for his use and their decision to do so is the reason the landlords incurred a cost to repair the riding ring. The tenant has not ridden the ATV in the riding ring since.
2. The tenant intended to wash his truck on the grass to avoid the mud and gravel splashing on his truck. After the landlord complained that he had parked on the septic field he has not parked there since.
3. While the landlord was at the property she proceeded to walk up the back stairs uninvited and invading the tenant's privacy. The tenant acknowledged he told the landlord to "beat it".
4. The landlord violated the tenant's use and enjoyment of the property that he has rented by attending the property frequently and without advance notice.
5. Garbage is placed in either the garbage cans or the recycling bins. It is possible that a dog may have gone through the cans or bins.

With respect to illegal activity, the landlord submitted that the damage to the property as described above constitutes illegal activity.

With respect to subletting the property the landlord submitted that the tenant has Alberta licence plates on his vehicle and, pursuant to licensing requirements, he must not be a resident of British Columbia. The landlord acknowledged that the tenant continues to be seen occupying the rental unit. The tenant submitted that he works in Alberta frequently but lives at the rental unit when he is not working.

Analysis

Where a Notice to End Tenancy comes under dispute the landlord bears the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden is based on the balance of probabilities.

As it was undeniable that the 2 Month Notice issued May 28, 2013 was invalid since the parties have a fixed term tenancy until December 31, 2013 that Notice is cancelled and is of no force or effect.

Based upon everything presented to me in accordance with the Rules of Procedure, I provide the following findings and reasons with respect to the 1 Month Notice issued June 3, 2013.

Riding ring

It was undisputed that the tenant used the riding ring located on the property and did ride his ATV in the riding ring. The parties were in dispute as to whether the tenant is entitled to use the riding ring under his tenancy agreement.

Under the Act, landlords are required to prepare a written tenancy agreement and provide a copy to the tenant. The premises rented to a tenant are to be reflected in the tenancy agreement. The written tenancy agreement, as with any contract, reflects the terms both parties agreed upon when the tenancy or contract formed. As such, the written tenancy agreement must reflect the premises rented to the tenant.

In this case, the landlord prepared a tenancy agreement using the form published by the Residential Tenancy Branch and the parties executed the written document. The form produced by the Residential Tenancy Branch provides space for the landlord to indicate the premises rented to the tenant.

Section 91 of the Act provides that the common law applies to landlords and tenants unless modified or varied under the Act. Under the Parol Evidence Rule of contract law, where the language of a written contract is clear and unambiguous, then no extrinsic parol evidence (written or oral) may be admitted to alter, vary or interpret in any way the words that are written in the agreement. When there is no ambiguity in a written contract it must be given its literal meaning. Words must be given their plain, ordinary meaning unless to do so would result in an absurdity.

The Parol Evidence Rule prevents a party to a written contract from presenting extrinsic evidence that contradicts or adds to the written terms of the contract that appear to be

whole. The rationale for this rule is that since the contracting parties have reduced their agreement to a final written agreement, extrinsic evidence should not be considered when interpreting the written terms, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written contract to contradict the writing.

I find the landlords' additional evidence submitted during the period of adjournment and the landlords' testimony provided during the reconvened hearing concerning the premises rented to the tenant amount to extrinsic parol evidence. Therefore, I must consider whether there is a basis to consider the parol evidence.

In order to consider the landlords' parol evidence I must be satisfied that the wording of the tenancy agreement is unclear or ambiguous or that there is some other basis in law that would warrant consideration of the parol evidence. Since the tenant's copy of the written tenancy agreement was excluded from consideration and the landlords could not recall the wording of the tenancy agreement I find I was not presented any indication that the wording of the tenancy agreement was unclear or ambiguous. The landlords' misplacement of their copy of the tenancy agreement does not form a basis for me to consider their parol evidence to determine the premises rented to the tenant. Further, I find I was not provided any other basis to consider the parol evidence. Therefore, I find I have not been provided a basis to consider parol evidence and the premises rented to the tenant remain as reflected in the written tenancy agreement, whatever that may be.

Since the landlords' assertion that the tenant does not rent the riding ring was under dispute and the landlords bear the burden of proof his use of the riding ring was a violation of the Act or the tenancy agreement, I find the landlords have not met their burden. Nor, am I satisfied that the grooves in the sand caused by the ATV consisted of significant damage as I find the tenant's submission that raking and rolling of a riding ring is required from time to time as reasonable when I consider the riding ring is made of sand.

Septic field

I find the assertion that the tenant parked on the septic field was unsupported by evidence showing where the septic field is located on the large property. I accept that after the landlord complained to the tenant that he had parked on the septic field the tenant has not since parked his truck in that location. Therefore, I find insufficient evidence to end the tenancy for this reason.

Use of profanity and loud music

I was provided conflicting testimony with respect to the tenant's use of profanity. Nevertheless, use of profanity in one's own home is not a violation of the Act. Therefore, I do not end the tenancy for this reason.

Loud music may be a basis for ending a tenancy where it is proven the noise is very loud or is heard on a frequent and on-going basis and that it unreasonably disturbs another occupant or significantly interferes with the landlord. I heard that as of June 3, 2013 the landlords were not living on the property but were there for property maintenance. I find I am unsatisfied that hearing loud music while performing property maintenance significantly interfered with the landlord's ability to perform the maintenance activities. Therefore, I do not end the tenancy for this reason.

Notices of Entry

I find the landlords have not established that the tenant's requests for notices of entry are a basis for ending the tenancy under the Act. Rather, I find that this issue revolves around the dispute concerning the premises rented to the tenant. It would be paramount to resolve that issue first and then conduct oneself in accordance with the Act. Since the issue of the premises rented to the tenant remains unresolved I find this reason is not a basis for ending the tenancy.

Garbage

I find the landlords' assertions that the tenant left garbage strewn around the property insufficient to end the tenancy when I consider that garbage or recycling may be strewn about by animals or wind from time to time, as submitted by the tenant. Where issues with garbage occur on a frequent basis I find it reasonable to expect that a landlord would give the tenant a warning about such negligence prior to issuing a Notice to End Tenancy. In the absence of any such advance warning or notice to the tenant that garbage on the property would be grounds for ending the tenancy I do not end the tenancy for this reason.

Illegal activity

With respect to allegation of illegal activity the landlord bears the burden to prove the tenant engaged in activities that were illegal, as evidenced by a serious violation of federal, provincial or municipal laws. I find the landlords failed to show that the tenant damaged the property as a result of illegal activity. In other words, I was not presented evidence that riding an ATV on the property is a serious violation of a federal, provincial or municipal law. Nor, was I provided evidence that the tenant did park his truck on the septic field, causing damage or putting the property at significant risk, and that it is

illegal to park on a septic field. Therefore, I find insufficient evidence of illegal activity and I do not end the tenancy for this reason.

Subletting

Subletting occurs where a tenant either does not move into a rental unit, or moves out of the rental unit, and rents the unit to a third party. The fact the tenant has Alberta licence plates on his vehicle does not satisfy me he has moved out of the rental unit. It is entirely possible a person may reside in multiple locations. Since I was presented undisputed testimony that the tenant appears to reside or occupy the rental unit when he is not working in Alberta I find the landlords have not proven the tenant sublet the property.

Summary

Based upon all of the above, I find the landlords have not met their burden to prove there was a basis to end the tenancy when the 1 Month Notice was issued June 3, 2013. Therefore, I cancel the 1 Month Notice with the effect that this tenancy continues.

As the 1 Month Notice has been cancelled, the landlords request for an Order of Possession is denied and I do not provide one with this decision.

Filing fee

As the tenant was partially successful in this Application I award the tenant one-half of the filing fee paid for this Application. Accordingly, the tenant is authorized to deduct $25.00 from rent or other monies payable to the landlord in satisfaction of this award.

Other Matters

In an effort to avoid future disputes between the parties, **I ORDER the tenant to provide the landlords with a copy of the tenancy agreement within seven (7) days of receiving this decision.**

Conclusion

The 2 Month Notice issued May 28, 2013 is invalid and of no effect. The 1 Month Notice to End Tenancy for Cause issued on June 3, 2013 has been cancelled. The tenant's requests for Orders for compliance and monetary compensation have been dismissed. The tenant has been awarded recovery of one-half of the filing fee and has been authorized to deduct $25.00 from rent or other monies payable to the landlords. **I have ordered the tenant to provide the landlords with a copy of the tenancy agreement within seven (7) days of receiving this decision.**

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: August 6, 2013

Residential Tenancy Branch