



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPC, MNDC, FF
TENANT: CNC, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession to end the tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy and for other considerations.

Service of the hearing documents by the Landlords to the Tenants were done by personal delivery on February 7, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by personal delivery on February 3, 2014 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the conference call the Property Manager said the monetary claim the Landlords' have made is with respect to lost rental income of another unit because of the smell allegedly coming from the Tenants' unit. As the other rental unit is a separate tenancy to this application the Property Manager agreed to withdraw the Landlords' monetary claim for loss or damage under the Act, regulations or tenancy agreement.

Issues(s) to be Decided

Landlords:

1. Are the Landlords entitled to end the tenancy?

Tenants:

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on December 1, 2013 as a fixed term tenancy with an expiry date of February 28, 2015. Rent is \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on December 1, 2013.

The Landlords said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 18, 2014 because they discovered a large bag of what the Landlords believes to be marijuana in the Tenants' rental unit. The Notice to End Tenancy has an effective vacancy date of February 28, 2014 on it. The Landlords' said this is a no smoking tenancy and they do not want drugs in their rental unit. The Landlords submitted three photographs of a garbage bag full of vegetation that the Landlord said was marijuana. As well the Landlords provided witness testimony from the Property Manager and the Property Manager's assistant that they had smelled marijuana in the Tenants' rental unit on two visits that they made to the Tenants. The Landlords said they do not want drugs in their rental units and the Landlords requested an Order of Possession for as soon as possible if their application is successful.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenants have engaged in illegal activity that has or is likely to damage the Landlord's property, to adversely affected the quiet enjoyment, security, safety or well being of another occupant or the Landlord and the Tenants have jeopardized a lawful right or interest of another tenant or the landlord.

The Tenants said the Landlord's claims are untrue as the vegetation in the garbage bag is alfalfa hay that the Tenant fed to their rabbit. On questioning the Tenant said the rabbit died approximately 6 to 8 months ago, but they still have the alfalfa hay. The Property Manager said the Tenants said they found the bag of marijuana in a dumpster from a commercial medical marijuana grow operation. The Tenant said that was not correct and they had not said that to the Property Manager. In addition the Tenant said that when the property manager and his assistant came to their rental unit they may have smelled marijuana on the Tenants as they said they smoke marijuana, but they did not smell marijuana plants in the rental unit. The Tenant said they have not done anything wrong and they believe the Notice to End Tenancy should be cancelled.

The Tenant said in closing that they pay their rent and are honest with the Landlords and they do not want to move. The Tenant requested that if they are not successful in cancelling the Notice to End Tenancy they would like 3 to 6 months to find and move to a new rental unit.

The Landlords said in closing that they want to end the tenancy as soon as possible because they do not want illegal drugs in their rental unit.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenants and the Landlords. In order to be successful in proving a claim a party must supply evidence or witness testimony that corroborates the parties claim. In this situation the Landlords have provided photographic evidence of the bag of what looks like marijuana in the Tenant's rental unit and witness testimony that Tenants use marijuana. The Tenants' have argued that the bag of vegetation is alfalfa hay, but the Tenants have not provided any evidence to corroborate this claim. Therefore on the balance of probabilities I find the bag contains marijuana and I dismiss the Tenants' request to cancel the Notice to End Tenancy for Cause dated January 18, 2014.

Further pursuant to section 55 of the Act I award an Order of Possession to the Landlords with an effective vacancy date of 2 days after service of the Order on the Tenants.

As the Landlord has been successful in this matter I also order the Landlords to retain \$50.00 of the Tenants' security deposit to recover the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

The Tenants application is dismissed without leave to reapply.

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 24, 2014

Residential Tenancy Branch

