Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, RR, FF, OPC

Introduction

This hearing dealt with applications by both the tenants and the landlords. The tenants applied to cancel a notice to end tenancy, for an order that the landlord make repairs to the unit or property, for an order that the tenants be allowed to reduce rent for repairs, services, or facilities agreed upon but not provided, and to recover their RTB filing fee. The landlords applied for an order of possession and to recover their RTB filing fee.

Both the landlords and tenants attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?
If the notice should be cancelled, are the tenants entitled to an order that the landlord make repairs?
Are the tenants entitled to an order that they be allowed to reduce rent?
If the notice is not cancelled, are the landlords entitled to an order of possession?

Background and Evidence

The landlords gave evidence that they served a Notice to End Tenancy for Cause (the "Notice") on the tenants by personal service on April 11, 2014. The Notice specifies an effective date, or move-out date, of May 31, 2014. The Notice lists the following reason:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlords gave evidence that the tenants have lived in an upper unit in their rental four-plex since October 2009 and have caused the landlords a lot of grief. Their

evidence is that the tenants have had problems with each tenant who has lived below them.

The landlords' evidence is that the tenants have tried to institute or enforce rules on the other tenants that were never stipulated in writing by the landlord to any of the tenants.

A photograph of the rental property showing the parking area was put into evidence. The rental property has a carport with spaces for two cars. Outside the carport is a paved area that appears wide enough for a car to turn around. Between the carport and the street is a driveway that appears wide enough so that a car could be parked on one side of the driveway and another car could make its way up or down the driveway beside the parked car. On either side of the driveway is a grassy area; the parties agree this grassy area belongs to the City of Burnaby and the landlords have an easement for their driveway. The photograph shows large boulders at regular intervals lining both sides of the driveway on the grassy area.

The landlords' evidence is that each of the upper unit tenants has one space in the carport. Other than that, there were initially no building rules about where any of the tenants may park or how many vehicles may be parked in the driveway. The landlords say that the tenants in this application did not want any cars to be parked on the side of the driveway behind their carport space and also complained about the total number of cars in the driveway, cars parking on the grassy areas (prior to the installation of the boulders), and the fact that a tenant on the other side of the carport sometimes changed which car she parked in her carport space. The landlords' evidence is that they have instituted some parking restrictions on other tenants at the request of the tenants in this application.

The landlords gave evidence that the tenants in this application contacted them in September 2010 to complain that there were two cars on the opposite side (from the tenants) of the driveway and carport. The landlords and tenants later agreed that two cars were a reasonable number to be parked there. A week later, the tenants had two confrontations with another tenant when there was a third car parked on the opposite side of the driveway.

The landlords gave evidence that the tenants in this application deliberately blocked another tenant's car in November 2011 so that the other tenant could not move her car out of her carport space, because they were angry that the other tenant's brother's truck was parked in the driveway. The landlords provided a letter from the other tenant who states the tenants in this application deliberately "boxed in" her car and she was forced to take a taxi to work early one morning. The other tenant states that incident was "the

last straw" in her conflict with the tenants in this application and she gave notice to move.

The tenants in this application deny that they deliberately blocked the other tenant's car.

The landlords gave evidence that the tenants in this application have demanded that the landlords institute rules about where building tenants can smoke or barbeque. The landlords' evidence is that no building tenants are permitted to smoke in their suites but there are currently no rules about where tenants can smoke outside. Similarly, there are currently no rules about where tenants can barbeque outside.

The landlords gave evidence that the tenants in this application have said that a barbeque cannot be located close to vinyl siding, however the landlords spoke to someone at the fire department who said there were no regulations governing the distance a barbeque can be from vinyl siding.

The landlords' evidence is that the tenants in this application are not reasonable with their neighbours. For example, the landlords' evidence is that the tenants in this application called the police because their neighbour was making a banging sound while putting up Christmas lights. The landlords also gave evidence that the tenants in this application on one occasion called the landlord after midnight because a neighbour's television was on too loud. The landlords also gave evidence that the tenants in this application called the landlord repeatedly on his cell phone one evening because a neighbour was pressure-washing the deck.

The landlords provided copies of letters from four other previous and current tenants, and noted that some of the other tenants have moved out because of conflicts with tenants in this application. The landlords' evidence is that they are concerned they may lose another tenant because the tenants in this application are having conflict with their current downstairs neighbour. The landlords' evidence is that the current downstairs neighbour has told them he will not stay if the tenants in this application stay.

The landlords gave evidence that, if the downstairs tenant moves out, they feel they could not in good conscience rent the downstairs rental unit to a new tenant in the knowledge that the new tenant will likely also have conflict with the tenants in this application.

A brief letter dated August 8, 2013 from a previous tenant who lived downstairs from the tenants in this application states he gave notice and moved out because of the tenants in this application. The tenants gave evidence that the previous tenant moved his

girlfriend in without the landlords' knowledge and his tenancy ended for breaking his tenancy agreement.

A letter dated April 16, 2014 from the current tenant who lives downstairs from the tenants in this application states the current tenant has "had issues" with the tenants in this application since he moved in on August 1, 2013. Among other issues, he states "They have complained about using the water while they are in the shower after they have purposely done it to me."

The tenants gave evidence that the current downstairs tenant had flushed the toilet or allowed his guest to flush the toilet while they were using their shower, and this caused their shower to be scalding hot. They admit that they deliberately did the same thing to the downstairs tenant.

The landlords provided a copy of a letter dated April 20, 2014 from a former tenant who lived downstairs from the tenants in this application. The former tenant states "I ended up moving out of the above mentioned address due to my upstairs neighbours and their relentless efforts to make living in peace with them as neighbours impossible." He states the tenants had his car towed away from the adjacent public land and the situation became a "living hell".

The tenants gave evidence that the former tenant who wrote the April 20, 2014 letter moved his girlfriend in without the landlord's knowledge and also had a cat without the landlord's knowledge.

The tenants deny that they try to enforce any rules. They agree that their main concerns about the rental building concern smoking, barbequing, and parking.

The tenants' position is that their concerns about other tenants are legitimate. For example, the tenants gave evidence that the previous downstairs tenant smoked but did not do so directly under their window. They would like the landlord to take action to prevent the current downstairs tenant from smoking directly under their unit.

Regarding the volume of their complaints to the landlord, the tenants gave evidence that the landlords do not live at the building and do not know what goes on. For example, they say that there was previously a problem with many cars pulling up to the building for five minutes and leaving their engines running, which caused fumes in their rental unit. The tenants gave evidence that the landlord has told them to talk to the other tenants when they have concerns, but the RTB has told them to talk to their landlord.

The tenants provided a copy of a letter they wrote to the landlords on February 12, 2014 in which the tenants listed a wide range of concerns they had about the rental property. The tenants gave evidence that they asked the landlord to give them a written response but he has not done so. The tenants say they delivered another letter to the landlords on April 9, 2014. Their evidence is that the landlords' response was to give them an eviction notice on April 11, 2014.

The tenants provided evidence regarding what repairs they would like the landlord to carry out. These are:

- institute a common outdoor smoking area away from the building
- institute a common outdoor barbeque area away from the building
- have an electrical inspection done of the rental building
- have the chimneys serviced

I have not summarized all the evidence regarding these repair claims for the reasons set out below.

Analysis

When a landlord issues a notice to end tenancy for cause and the notice is disputed by the tenant, the onus is on the landlord to prove one or more of the specified causes on a balance of probabilities. Here, the landlord has specified one cause for ending the tenancy. If the landlord proves the specified cause, the Notice will not be cancelled. However, if the landlord does not prove the specified cause, then I must cancel the Notice.

At issue is whether the tenants in this application have significantly interfered with or unreasonably disturbed another occupant and/or the landlord.

Regarding the landlord, I accept the landlord's evidence that the tenants in this application have an unusually high number of concerns and that the tenants have at times contacted the landlords frequently.

That said, I am not convinced that the tenants' behaviour toward the landlords is sufficiently egregious to warrant ending the tenancy. It is the job of a landlord to address concerns from their tenants and, in some cases, to deal with disputes between tenants. Some tenancies will be more difficult and time-consuming than others.

It is reasonable for a landlord to set boundaries with tenants. For example, many professional building managers deal with day-to-day tenant concerns from Monday to

Friday during business hours only and provide a telephone number for emergencies outside of those times. If a tenant were given those parameters, and repeatedly dialed the landlord's cell phone after hours for non-emergencies, the landlord may be able to establish that the tenant has engaged in unreasonable disturbance. However, if a landlord has never given the tenant any parameters about contacting the landlord, it may be more difficult to establish unreasonable disturbance.

Regarding the other occupants of the rental building, I accept the landlord's evidence that the tenants in this application have an unusually high number of disputes with other tenants in their rental building. What is most significant is the evidence from three former tenants that they have moved out of the building at least in part because of conflicts with the tenants in this application, and another tenant has indicated he will also leave if these tenants do not. Where people leave their homes because of the level of conflict with their neighbours, that may be evidence of significant interference and/or unreasonable disturbance. The fact that this occurred with several neighbours suggests that the problem is with the behaviour of the tenants in this application.

I find that the tenants in this application engaged in at least two incidents that constitute significant interference and/or unreasonable disturbance. First, I find that the tenants in this application did deliberately block the car of a neighbour early one morning. I prefer the evidence of the landlords and the other tenant regarding this incident, because it is implausible that the tenants would not have realized that the location of their car would cause the other tenant to be unable to move her car from the carport. The second incident is one the tenants in this application admitted to, and that is deliberately impacting the temperature of the water while their downstairs neighbour was taking a shower. The tenants in this application suggested they were justified in this action because they thought the neighbour had either deliberately or negligently impacted the water temperature for them.

Based on the evidence that other tenants have moved out and another tenant is considering moving out because of conflicts with the tenants in this application, and based on the two incidents above, I find the landlord has proven that the tenants significantly interfered with or unreasonably disturbed other occupants of the rental building. For that reason, I do not cancel the Notice and the tenancy shall end on the effective date of May 31, 2014.

Since the tenancy is coming to an end, it is not necessary that I address the tenants' application for an order that the landlords make repairs to the unit, site, or property. Accordingly, the tenants' application for an order that the landlords make repairs to the unit, site, or property is dismissed.

The tenants did not provide evidence to show the landlord promised any repairs, services, or facilities that were not provided. For that reason, the tenants' application for an order that the tenants may reduce rent for repairs, services, or facilities agreed upon but not provided is dismissed.

Since I have found that the Notice is effective in ending the tenancy, the landlords are entitled to an order of possession. I grant the landlord an order of possession which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Since I have found that the Notice is effective in ending the tenancy, the landlords are also entitled to recover their filing fee of $50.00. I authorize the landlords to deduct this amount from the tenants' security deposit.

Conclusion

The tenants' application is dismissed. I grant the landlords an order of possession.

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: May 02, 2014

Residential Tenancy Branch