



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC, OPB, MND, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy for cause. He also requested a monetary award in the amount of \$3,300.00. The landlord has applied for an order for possession and a monetary award for the cost to repair damage to the rental property.. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord attended and was represented by legal counsel.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 1, 2014 be cancelled?
Is the landlord entitled to an order for possession?
Is the tenant entitled to a monetary award and if so, in what amount?
Is the landlord entitled to an award of damages for necessary repairs to the rental property; if so in what amount?

Background and Evidence

The rental property is a house in Port Coquitlam. There is a large detached garage/storage building on the rental property. The tenancy began in December, 2013. There is a written tenancy agreement; it is described and titled as a "Roommate Agreement". The rental unit is a three bedroom house. The landlord, D.L. lives in the rental unit and shares the house with the tenant and another occupant. They each have their own bedroom and share common areas, including kitchen and bathroom facilities. The owner of the rental property is J.L. who the father of D.L. J.L. is named as landlord in these proceedings although it appears that the son is acting as landlord and is effectively his father's head tenant. The father does not live in the rental property; therefore this is not a situation where the *Residential Tenancy Act* would not apply because the tenant shares bathroom or kitchen facilities with the owner of the accommodation. Neither party raised a jurisdictional issue and I find that this is a tenancy that falls within the purview of the *Residential Tenancy Act*.

The landlord testified that the tenant's guest painted some graffiti murals on interior wall of the garage/storage area. There were several murals; they were painted from August 2nd to August 4th. The landlord said that he saw the graffiti on August 4th and told the tenant to repaint and repair the graffiti marked areas and return them to their original condition. The landlord said that the tenant failed to remove or paint over the graffiti and on August 26, 2014 he gave the tenant a letter. The letter said that on August 4th the tenant was verbally instructed to remove the graffiti. The letter stated in part as follows:

It has been three weeks since the verbal warning, and in this time you and your house guest painted over some of the graffiti-ed areas, but only to replace it with more graffiti which appears to be a "Tag" of your house guest's initials. Another area was painted over but the repair or damage caused is not complete as the graffiti is still showing through.

This is your final notice to remove the four graffiti-ed areas by painting over the damage in white until the damage can no longer be seen and the walls are thus restored to their original condition.

This is to be completed by Saturday, August 30th.

The landlord said that the work was not performed by August 30th and he served the tenant with a one month Notice to End Tenancy on September 1st. The tenant was performing the required painting on September 1st, but it was not completed. The landlord referred to a quote for painting work in the amount of \$135.00. He said that he preformed the painting himself and said that the cost for materials was the sum of \$98.73. The landlord requested a monetary award in the said amount.

The tenant testified that his guest who stayed with him is a professional painter and artist. When she was at the rental property in early August she proposed painting some murals on the interior wall of the garage/storage area so that she would be able to take some photographs for her portfolio. The tenant said that the landlord was not around at the time and he did not ask for permission because he considered that if the landlord objected to the murals they could be painted over.

The tenant said that he did not receive definitive verbal instructions from the landlord to remove the graffiti, but in mid-August the landlord did object to his girlfriend and her son coming to the house. He said no dates or timelines were verbally stated for cover-up of the walls in the garage. The tenant said that the landlord gave him the August 26th letter which gave him only four days to have the painting done. He said that the landlord knew he would be away during that period. The tenant said that he was in the process of painting over the graffiti on September 1st when the landlord served him with the Notice to End Tenancy. The tenant said that he regarded the grounds for the Notice to End Tenancy as a pretext to evict him when the real reasons for the landlord's desire to end the tenancy were related to tension in the relationship between them in the context of the shared living space. The tenant said that there was drawing and painting

on the walls before the graffiti was applied and the wall were now in better condition than they were before the graffiti was done.

The tenant wrote to the landlord before the hearing. He proposed that he would move out of the rental unit provided that the landlord pay him a specific amount of money to compensate him for loss of quiet enjoyment and costs that he incurred as a result of the residential tenancy proceeding and as well, his moving costs. The landlord rejected the proposal and said he wished to proceed to arbitration.

At the hearing the landlord and the tenant engaged in a private settlement discussion, but they were unable to reach an agreement to settle the disputes.

The tenant said at the hearing that he was seeking payment of the sum of \$3,300.00; this sum included an amount for loss of quiet enjoyment and amounts for wages lost in pursuing the dispute resolution process. The amount claimed was also said to include the tenant's security deposit and moving expenses. The tenant said that regardless of the outcome of this proceeding it would be necessary for him to move because of the strained relationship between the parties.

Analysis

The Notice to End Tenancy given by the landlord on September 1, 2014 alleged that the tenant did not perform required repairs of damage to the rental unit and that he breached a material term of the tenancy and failed to correct it within a reasonable time after written notice to do so.

I accept that the painting of graffiti to the garage/storage areas did constitute damage caused to the rental property and I agree that the landlord had the right to require the tenant to rectify it by re-painting the affected areas. I note that the graffiti was done to internal garage walls and on painted surfaces that were less than pristine at the outset. I do not accept that there was an urgent requirement that the matter be fixed immediately. There were no municipal complaints or objections by neighbours. The landlord's written notice to rectify the problem allowed the tenant only four days to do so. The tenant was actively working to paint over the offending areas on the fifth day after the written notice and was engaged in this work when the landlord attended to serve him with a Notice to End Tenancy on September 1st. I do not find that the circumstances amounted to sufficient cause to end the tenancy. I find that the Notice to End Tenancy dated September 1, 2014 should be cancelled. I allow the tenant's application and I order that the Notice to End Tenancy dated September 1, 2014 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

With respect to the tenant's application for a monetary award, I do not find that the tenant is entitled to any monetary award. Parties are not entitled to recover costs associated with dispute resolution proceedings other than recovery of the filing fee for

an application. The tenant claimed that he will have to move because of the strained relations between the parties in this shared living situation. That is an inherent risk associated with shared living arrangements. If the tenant determines that he cannot continue in the tenancy, then he will have to give the appropriate notice and make arrangements to move. His security deposit must be dealt with in accordance with the provisions of the *Residential Tenancy Act* at the end of the tenancy. I do not find that the tenant has provided evidence to support the granting of an award of compensation for loss of quiet enjoyment and this claim is dismissed without leave to reapply. I find that the tenant is entitled to recover the \$50.00 filing fee for his application.

The landlord's application for an order for possession pursuant to the Notice to End Tenancy is dismissed without leave to reapply. I decline to award the landlord the filing fee for his application, although I do find that the landlord is entitled to be compensated for the cost of additional paint in the amount of \$98.73 as claimed at the hearing.

Conclusion

The Notice to End Tenancy has been cancelled. The tenant was awarded the \$50.00 filing fee for his application. Pursuant to section 72, I set off the amount of the filing fee against the monetary award to the landlord; this leaves a net amount of \$48.73 due to the landlord and I order that the landlord may retain the sum of \$48.73 from the security deposit that he holds. The balance of the security deposit must be dealt with in accordance with the *Residential Tenancy Act* at the end of the tenancy.

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: October 24, 2014

Residential Tenancy Branch

