Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing convened as a result of a Tenant's Application to Cancel a Notice to End Tenancy for Cause and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The *Residential Tenancy Act Rules of Procedure: Rule 11.1* provides that where a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord will present his or her case first.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

At the September 29, 2014 hearing the Landlord stated that he had less than a week's notice of the hearing. The Landlord confirmed that he refused delivery of the registered

mail and as a consequence I made an interim decision that the Landlord's late evidence would not be considered.

The Notice to End Tenancy for Cause, issued August 5, 2014, indicates the reasons for issuing the Notice were that the Tenant, or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord; and

- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

[emphasis in original]

(the "Notice")

According to the Tenant's Application for Dispute Resolution, the Tenant claimed that the Notice was served August 20, 2014. The Notice informed the Tenant that he had 10 days to dispute the Notice by filing an Application for Dispute Resolution. The Tenant made such an Application on August 28, 2014.

The Tenant is the Landlords' nephew.

The rental unit is a manufactured home located on a one acre parcel of land owned by the Landlords. The Landlords testified that the land was approximately 70 feet wide and 500 feet deep. The manufactured home sits on the bottom portion of the lot and the Landlords are building a cabin in the upper portion. A driveway is located approximately 12 feet off the property line which is shared by the manufactured home and the cabin building site.

The tenancy began in January of 2012; rent is $750.00 per month, payable on the 1st of the month. No security deposit was paid and there is no tenancy agreement.

According to the Landlords, they began building the cabin in the summer of 2013 when the foundation was dug and the driveway put in. The construction of the building began in the summer of 2014.

The Tenant's father (who is the Landlord's brother in law) was asked by the Landlords to supervise the construction. Apparently in the summer of 2014 the Tenant's father and the Landlords subsequently had a disagreement which resulted in the Tenant's father no longer performing this function.

The Landlords testified that they sent a text to the Tenant in June of 2014 to tell him that the contractors would be "arriving soon". The Tenant testified that he did not know when the contractors were to arrive, and that the only information he received was from his father.

The Landlords testified that the contractors worked from 8:00 a.m. to 8:00 p.m., depending on the weather.

The Landlords live in a different province, and in July of 2014 came to British Columbia to supervise the construction. They brought with them a travel trailer which they placed near the manufactured home. They also connected to the same power supply as the manufactured home. The Landlords testified that the Tenant was not pleased with the location of the travel trailer and after only two hours, the Landlords moved the travel trailer to a recreational vehicle park at the Tenant's request.

The Landlords testified that the reason for issuing the Notice was that the Tenant, or persons permitted on the property by the Tenant, blocked the access for the Landlords' contractors to access the construction site at the back of the property by parking a vehicle in the driveway. The Landlords stated that they issued the notice after the second time this occurred, the first being on July 31, 2014. The Landlords stated that the first time this occurred, the vehicle was a truck registered in the Tenant's father's name; however, the Landlords stated that the Tenant works for his father and drives that particular truck. The Landlords believed that it was the Tenant who blocked the driveway, and not his father.

At the continuation of the hearing on November 21, 2014, the Landlords stated that when they began construction on the cabin they were required to place a $5,000.00 bond on the manufactured home, and promise to decommission it or move it as they are not permitted to have two separate dwellings. The Landlords denied this was the reason for issuing the Notice and stated they did not plan to decommission the manufactured home until the summer of 2015.

At the continuation, the Landlords clarified that the Tenant, or persons permitted on the property by the Tenant, blocked the contractor's access to the cabin site on two separate occasions for a total of six hours. However, notably, the Landlords then stated

that another such incident occurred and describe it as “the last time”; apparently this final incident occurred at the end of August and in response the Landlord had the vehicle towed away. According to the Landlord, the contractors attended the rental property and spoke to the Tenant’s friend about delivering scaffolding at which time the Tenant’s friend refused them access. Consequently, the Landlord sent an email to the Tenant to advise that contractors would be working on an ongoing basis and would be attending the property daily. According to the Landlord, the Tenant responded that he was agreeable to the contractors attending at 11:00 a.m. the following day.

The Landlord stated that in the two months which passed between the September 29, and November 21 hearing dates, the situation had improved. As well, the Landlord hired a property manager which, according to the Landlord, further improved the situation.

The Landlord further submitted that the Tenant’s friend is actually a roommate, and was allowed to live in the manufactured home by the Tenant, but without the Landlord’s knowledge or consent. The Landlord stated that their insurance was no longer applicable as it only applies to family members. No evidence was filed by the Landlord to support this claim.

The Landlords also stated that the Tenant was aware of the construction start date, and that prior to a communication break down with the Tenant’s father and Landlord’s brother in law, that information flowed freely. Further, the Landlords stated that they now understand how they could have communicated better with the Tenant regarding the construction.

The Tenant testified that the contractors attend the property every day, and that they arrived most days at 7:00 a.m. and leave at 8:00 p.m. He said that the cabin is only 100-150 yards away from the manufactured home and that he found this to be very disruptive.

In terms of the Landlord’s allegation that the Tenant blocked the driveway, the Tenant testified as follows.

There were three such incidents. The first was when the Tenant’s father, who was hired by the Landlord to supervise the construction, parked a truck across the driveway. The Tenant stated that it was this incident which “sparked” the entire dispute between the Landlord and the Landlord’s brother in law. The Tenant said this had nothing to do with him, but was a personal dispute between the Landlord and his father.

The second incident was on a Sunday morning. The Tenant said that there hadn't been contractors on the property for weeks, and the Tenant simply did not know they were coming. He admitted the truck was parked on the driveway, but stated that it was not done maliciously as he did not know they required access that day.

The third and final incident occurred when the Tenant was at his girlfriend's house. He stated that he was later informed by his roommate, who was at the rental unit at the time, that the contractors arrived without prior notice, and the roommate refused them entry to deliver materials because notice had not been given.

Analysis

The Landlords cited the incidents when the driveway access was blocked as being the reason for issuing the Notice. The Landlord submitted that this significantly interfered with their ability to attend to the building of the cabin.

The Landlord further submitted that the presence of an unrelated person living in the manufactured home rendered the property insurance void thereby putting the property at risk. Notably, this latter claim was not indicated on the Notice as a reason for ending the tenancy.

As no tenancy agreement existed, it is not possible to determine the specifics of the tenancy and in particular the boundaries of the property being rented or any details with respect to the use of the driveway. It is also not possible to determine the parties' agreement with respect to other occupants of the manufactured home.

The Landlord failed to provide any evidence which would support his claim that the Tenant was aware of the specific details of the construction of the cabin, and that the Tenant agreed to having contractors and workers accessing the cabin on the shared driveway from early morning to 8:00 p.m. every day without any further notice.

Similarly, and while not a reason noted on the Notice for ending the tenancy, the Landlord failed to provide any evidence which supported his claim that the manufactured home was not insurable as a consequence of the Tenant having a roommate who was unrelated to the Landlord.

The Tenant submitted that he did not intentionally impede the Landlord's access to the cabin. He conceded that the driveway was blocked on three separate occasions, but

claimed he was either not responsible for the location of the vehicles, or if he was, that it was accidental.

The Tenant stated that the first incident was a result of a personal issue between the Landlord and the Landlord's brother in law, the latter of which had been hired by the Landlord to supervise the construction of the Landlord's cabin. The Tenant stated that it was his father, the brother in law to the Landlord, who parked the vehicle in the driveway and that it had nothing to do with the Tenant.

The Tenant submitted that the second incident was a mistake, simply because he did not know the contractors would be attending the property on a Sunday.

The Tenant submitted that the third incident was again a result of the Tenant being unaware that the Landlord required access to the cabin.

Where on party provides a version of events in one way, and the other party provides an equally probably version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord bears the burden of proving the Notice should be upheld.

I find that the first incident was a consequence of issues between the Landlord and his brother in law, which originated due to their business relationship, and was unrelated to the tenancy.

With respect to the second incident, I find that it is not possible, on a balance of probabilities, to decide whether the Tenant intentionally impeded the Landlord's access to the cabin, or whether it was simply a mistake.

As the Landlord failed to provide any evidence which would support a finding that the Tenant was aware that the contractors would require daily access to the cabin site, I find that it is not possible, on a balance of probabilities, to find fault with the Tenant, or his roommate for failing to provide access to the Landlord's contractor during the third incident when the driveway access was blocked.

Accordingly, I find that the Landlord has failed to show that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or

unreasonably disturbed another occupant or the Landlord or seriously jeopardized the lawful right of the Landlord.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of $50.00 towards his next month's rent.

Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time $50.00 reduction in his next month's rent.

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: December 11, 2014

Residential Tenancy Branch