Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, LRE

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for cause, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; for an Order for the landlords to comply with the *Act*, Regulations or tenancy agreement; and for an Order to suspend or set conditions on the landlords' right to enter the rental unit.

At the outset of the hearing the tenants advised that they have vacated the rental unit on October 31, 2016 and therefore withdraw their application for an Order to cancel a One Month Notice to End Tenancy for cause; for an Order for the landlords to comply with the *Act*, Regulations or tenancy agreement; and for an Order to suspend or set conditions on the landlords' right to enter the rental unit.

The tenant AZ and the landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence.

Procedural issue – the last 11 pages of the tenants' evidence sent on October 25, 2016 was not provided within the 14 day time frame in accordance to rule 3.14 of the Rules of Procedure. I have therefore not considered these 11 pages of documentary evidence. I have reviewed all other 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.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on February 01, 2015 although the tenants moved in on January 21, 2015. Rent for this unit was $1,600.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of $800.00 on January 12, 2015.

The tenant attending testified that since the start of the tenancy she has encountered problems with the landlord DC. They signed the tenancy agreement on January 12, 2015 and DC gave the tenants the keys and said they could start to move things into the house. The landlords' son was present while they moved boxes in as he was there painting and DC was also present when movers brought items in. Later DC asked the tenants to pay a prorated rent for January and they agreed on $500.00. This was not discussed prior to the tenants moving stuff in but the tenants paid it anyways or they would have had to have returned the keys and not move in until February 01, 2015.

The tenant testified that periodical they experienced other issues with DC. There was a time when DC said they were late with their rent; yet rent was paid on time each month. A portion of rent was paid by BC Housing via Vernon Native Housing Society and that was paid on the last business day of each month. The portion of rent paid by the tenants was also paid prior to the 1st of each month. Up to April the landlord would come and collect it and after April the tenants asked BC Hosing to pay the landlord directly. The tenant testified that these accusations affected their right to quiet enjoyment of their rental unit. The tenants seek compensation for this loss of quiet enjoyment to an amount to be determined by the Arbitrator.

The tenant testified that they suffered a further loss of quiet enjoyment from July 18, 2016 until they vacated the unit on October 31, 2016. The tenant testified that she received phone calls

and voice messages from DC about a child's wicker table the landlords said was a family heirloom which was allegedly left in the home and which DC said belonged to her daughter. The tenant testified that there was not a white wicker child's table in the home when she moved in and this was confirmed by the woman from Native Housing who looked at the unit with the tenant. The landlords did not do a move in inspection report to detail if a table had been left in the home. DC contacted the tenant twice about this table and on one occasion DC states she had a conversation with the tenant about it in the tenants' daughter's room where the table was supposedly located. The tenant returned the landlords call and told her that there was not a table. DC called back again and said her husband was upset about the table, he did not want to have thieves in his house and if the tenant did not return the table the landlords would give them notice. The tenant referred to the voice mail messages provided in digital evidence.

The tenant testified that she received more messages from DC who then said her son was going to buy the house and move into it and that she was going to give the tenants notice. The tenant testified that then DC accused the tenants of having drugs in the unit and that DC was coming the following Monday to do an inspection and was bringing a sheriff with her. The tenant testified that she called the landlord back and said that all this was not appropriate. One of DC's voice messages was full of swearing and the tenant did not want her children to hear that or be exposed to this sort of conflict.

The tenant testified that DC made other accusations against her and accused the tenant of running a department store from the home. DC called the Bylaw office to report the tenant but the bylaw officer wrote and said the tenant had not contravened any bylaws and the neighbours had not complained about the tenants.

The tenant testified that on one occasion she was putting a sign up the street about a garage sale when DC was out for a run with her trainer she took pictures of the tenant putting the sign up. The tenant testified that DC has called the police, the disability department, Vernon Native Housing Society and City Bylaws and made accusations against the tenants. This all came about because the landlord thought the tenant had taken her child's table.

The tenant testified that DC then served her with a One Month Notice to End Tenancy for cause on August 29, 2016 and stated that the tenant had not paid a security or pet damage deposit.

The security deposit was paid at the start of the tenancy and the landlord never asked the tenants for a pet damage deposit even though the landlords knew the tenant had a cat when they moved in and later got a dog with the landlords understanding. DC even brought treats for the dog but never asked the tenant to pay a pet damage deposit.

The tenant testified that they do not use drugs in the house and the accusations and threats to evict the tenants could have had an effect on the tenants' children and possibly led to the children being removed from the home. The tenant testified that with regard to the garage sales. She had arranged four garage sales over a period of time. She had one. The second one was cancelled as the tenants had a family emergency. The third one was cancelled as the tenants' daughter had a medical emergency and the tenant had permission from City Bylaws to hold a forth one as the other two did not take place and you are only allowed to have two in any year.

The tenant testified that the landlord continued to make accusations to these groups at least four or five times between July and September. This affected the tenants' right to quiet enjoyment of the rental unit and the tenants seek compensation of $5,600.00.

The tenants seek compensation for moving costs because they feel that they were forced out of the unit. The tenant referred to three estimates from moving companies provided in documentary evidence; however, the tenant testified that they did not use any of these companies as they decided to move out on October 31, 2016 and use a U- Haul truck. The tenants therefore seek to recover the cost for the U-Haul truck of $364.00 and the costs paid to a man to help them move furniture for 10 hours at $12.00 an hour to an amount of $120.00.

The landlords disputed the tenants' claim. DC testified that when they signed the tenancy agreement the tenant said she had a lot of stuff to move and could they move in some boxes early. The landlords agreed they could move in some items but the tenancy did not start till February 01, 2016. DC went to the house and found that the tenants had actually moved in; there was stuff on the stove and the fridge was full and beds had been slept in. DC testified that the landlords still had some belongings in the house. The child's white table and chairs were there and DC did manage to remove the chairs but she had to leave the table at that time. DC testified that she informed the tenants that because they moved in before the start date of the

tenancy this would affect the landlords' insurance. The tenants agreed to pay an amount for prorated rent and additional insurance costs of $500.00.

The landlord testified that there were some issues with late rent payments. The tenant called and asked the landlords to change the locks as she and her husband had had a dispute. The landlords said they would not pay to change the locks. The next thing they heard was when they got a letter from Vernon Native Housing Society saying that they had changed the locks for the tenant and that there was an outstanding balance for this work which would be deducted from the tenants' rent payment the society provided to the landlord. The landlord testified that they did not give permission to the tenants to change the locks and were not given keys to the new locks. The tenants did however pay the charge back to the society. There were a few other times that rent was late when the tenant EZ was not living in the home and when this was mentioned to the tenant they got into a discussion about the missing table and the garage sales.

The landlord testified that she did get upset with the tenant about the missing table and did leave voice messages but there were also responses to these voice messages that the tenant has not provided in evidence. The tenant told the landlord to watch herself. Due to this the landlord told the tenant that she was coming to do a walk through inspection and would be bringing a sheriff with her. The landlord agreed she also contacted the police about the threats made by the tenant and the police opened a file and advised the landlord to just stay away from the tenant and to deal with any matters through the RTB.

DC disputed that she called the police and said there were drugs on the property. DC testified that she never called the disability department as she did not know the tenant was claiming disability as the tenant said she was working. DC agreed she did call the City Bylaw department as a neighbour complained about a tarp over the garage and the landlords did not want to confront the tenant about this. DC referred to her evidence showing four advertisements for garage sales and pictures taken of posters and social; media sites. The Bylaw officer wrote to the tenant and said if she has any more garage sales they will fine her. The tenant went to the Bylaw office and picked up a copy of the letter meant for the landlord by saying she was the landlord. The landlord testified that she has a right to contact City Bylaws if the tenant is in breach of a bylaw.

The landlord testified that she only called the police once about the tenant's threats and only called the Native Society a few times concerning the change of locks and to pick up rent cheques. The landlord agreed she did tell the tenant that her son was buying the house and moving in, out of frustration with the tenant.
The landlord testified that with regard to the One Month Notice; she only checked that box on the Notice about the pet deposit not being paid out of frustration as the tenant had told the landlords it was too late to ask for one and it should have been asked for at the start of the tenancy.

Both parties declined the opportunity to cross examine the other party.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

In the matter of compensation for a loss of quiet enjoyment, the tenant testified that she has had on going issues with the landlord since the start of the tenancy but only described two issues prior to July, 2016 concerning the tenant taking possession of the rental unit before the tenancy legally started and concerning late rent payments. This matter of when the tenants could move into the home may have been miscommunication between the parties at that time and it is clear the parties resolved this issue when the tenants paid a prorated rent of $500.00 to the landlord. With regard to late rent if the landlord believes the tenant has or is likely to pay rent late the landlord is entitled to speak to the tenant about this. I find there is insufficient evidence to show any further issues that could be determined to have affected the tenants' right to quiet enjoyment. The tenants' claim for an undisclosed amount in compensation at my discretion is therefore dismissed.

In consideration of the reminder of the tenants' claim for a loss of quiet enjoyment; in this matter the tenants have the burden of proof to show that the landlords acted in such a manner that caused a loss of quiet enjoyment and devalued the tenancy. It is important to note that where one party provides a version of events in one way, and the other party provides an equally

probable 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.

I refer the parties to the Residential Tenancy Policy Guidelines # 6 which states, in part, that:

Under section 28 of the *Residential Tenancy Act* (RTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:
• reasonable privacy;
• freedom from unreasonable disturbance;
• exclusive possession, subject to the landlord's right of entry under the Legislation; and
• use of common areas for reasonable and lawful purposes, free from significant interference.

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

With this in mind I turn my thoughts to the events described by the tenant and disputed by the landlord. It appears that the disagreement stems from the issue over this child's table which the landlord has stated was in the unit and which the tenant has stated was not in the unit. The tenant goes on to describe other events and the landlord has disputed that these occurred as described by the tenant. The tenant has the burden of proof to show that the events described above were frequent and ongoing interference and unreasonable disturbance by the landlords and not some continuing disagreement between the parties.

The tenant has insufficient evidence to show the landlord maliciously reported the tenant to the police concerning drugs in the property, or that the landlord called the disability department to report the tenant. The landlord disputed this and disputed frequent calls to City bylaws and the Native Housing Society. A landlord is entitled to report any non-compliance with City Bylaws, any perceived threats made against her to the police and to have discussions with the Native Housing Society after they sent the landlord a letter about the change of locks. A landlord is also

entitled to threaten eviction proceedings and to issue any number of Notices to End a Tenancy without this being regarded as harassment or affecting tenants' rights to quiet enjoyment.

I must conclude from the evidence before me that this was a dispute between the parties which could not be resolved amicably and the tenants have insufficient evidence to show that the landlords breached the covenant of quite enjoyment. The tenants' application to recover compensation of $5,600.00 is therefore dismissed.

With regard to the tenants' application to recover moving costs; the tenants were served with a One Month Notice to End Tenancy and filed an application to dispute that Notice. Prior to the hearing the tenants decided to vacate the rental unit. Had the tenants waited until the hearing the tenancy may or may not have ended. Had the tenants' application to cancel the Notice been upheld the tenancy would have continued and they would not have incurred moving costs. Had the tenants' application been dismissed the landlords would have been entitled to an Order of Possession and the tenants would not have been entitled to recover any moving costs. I therefore find the tenants vacated the rental unit through their own choice and therefore are not entitled to recover any moving costs. This section of the tenants' application is dismissed.

Conclusion

For the reasons set out above I dismiss the tenants' application 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: November 01, 2016

Residential Tenancy Branch