

Decision

Dispute Codes:

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Introduction

I have been delegated authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This is the Tenant’s application to be allowed more time to serve the Landlord with the Application and hearing package, cancel a One Month Notice to End Tenancy for Cause dated December 2, 2008, and to recover the filing fee from the Landlord for the cost of this application.

I reviewed all of the evidence on the case file before the Hearing. Both parties gave affirmed testimony and the matter proceeded on its merits.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the Tenant should succeed in her application to allow her more time to serve the Landlord with the Application for Dispute Resolution and the hearing package; and if so
- Whether the One Month Notice to End Tenancy for Cause should be cancelled; and if so

- Whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this application.

Background and Evidence

Regarding service of the Landlord's Notice to End Tenancy dated December 2, 2008:

The Landlord mailed the Notice to the Tenant by registered mail. The Landlord provided a tracking number, and a search of the Canada Post tracking system confirms that the Tenant received the Notice on December 3, 2008.

Regarding Tenant's application to be allowed more time to serve the Landlord:

The Tenant testified that she mailed the Landlord a copy of the Tenant's Application for Dispute Resolution on December 10, 2008, by registered mail. The Tenant provided a tracking number and a search of the Canada Post tracking system confirms that a package was delivered to the Landlord on December 12, 2008. However, the Tenant stated that she mailed an unfiled Application to the Landlord on December 10, 2008, with no Hearing package.

The Tenant's Application for Dispute Resolution was received and filed at the Residential Tenancy Branch on December 12, 2008. The Tenant stated that by December 19th, when the Residential Tenancy Branch had not called her to let her know that the Hearing package was ready to be picked up, she called the Residential Tenancy Branch to inquire about the Hearing package. The Tenant testified that during that telephone call, she was advised by the Residential Tenancy Branch that the package was ready, but that she had called too late in the day to pick up the package on December 19, 2008, which was a Friday. Therefore, she picked the package up on Monday, December 22, 2008, which was her earliest opportunity to do so.

The Tenant stated that she mailed the filed Application and the Hearing package by registered mail on December 24, 2008, and also left a copy of the documents under the Landlord's door on December 24, 2008. The Tenant provided a tracking number. A

search of the Canada Post tracking system confirms that the documents were mailed on December 24, 2008 and available for pick up on December 29, 2008.

The Landlord testified that she received the filed Application and Hearing package on December 24, 2008, when it was slipped under her door. She stated that she also received notification from the Post office on December 29, 2008, that it was available to be picked up.

Regarding the Tenant's application to cancel the Notice to End Tenancy for Cause

Landlord's evidence:

The Landlord testified that the Tenant barricaded the Landlord's door leading to the common laundry area with a series of barricades, each one stacked up against the other: a closet door; a mattress; chain link; plastic tubs; a set of stairs; and suitcases. The Landlord stated that this barricade had the effect of barring the Landlord's access to a common area; barring the Landlord's access to the electrical panel for the property; and barring the Landlord from her secondary exit in the event of a fire.

The Landlord testified that the Tenant damaged the Landlord's property by drilling holes into the drywall in front of the Landlord's door which accesses the laundry room, in order to install brackets and a bar in front of the Landlord's door. The Landlord testified that this is a structural change and the Landlord did not give the Tenant permission to do so.

The Landlord stated that all of the doors entering the laundry area have their own locks and can be dead bolted from the inside.

The Landlord testified that she gave the Tenant a caution notice when the Landlord tried to enter the common laundry room and found it to be barricaded. She directed the Tenant, in writing, to remove the barricade by November 27, 2008 at 3:00 p.m. A copy of the Notice was included in the Landlord's evidence package. On November 28th, the Landlord entered the laundry room from her own suite, using a crowbar and blocks to gain access, and removed the barricade. The Landlord provided into evidence 24

photographs, depicting the barricade and the damage caused to the drywall by the metal brackets.

On December 2, 2008, the barricade was back up. On December 30, the barricade remained up.

The Landlord stated that she wants the Tenant out of the rental unit.

Tenant's Evidence:

The Tenant agreed that she did erect the barricade, but said that the laundry room is not a common area and is for her own use only. The Tenant stated that the Landlord has her own laundry facilities in the upstairs suite. The Tenant further testified that the barricade did not stop the Landlord from gaining access to the electrical box and that the Landlord had other means to escape the building in the event of a fire.

The Tenant agreed that she had drilled holes into the drywall to affix the metal brackets.

The Tenant testified that she occupies the two suites in the basement of the property. She uses one of the suites as a residence and the other suite as a home office. The Landlord occupies the upper floor of the property and part of the basement. The laundry room is in the basement. There are three doors that access the laundry room: one which leads into the Tenant's office space; one which leads into the Tenant's residence; and one which leads into the Landlord's residence.

The Tenant said that she erected the barricade because the Landlord had entered her rental unit without proper written notice. The Tenant stated that her rental unit includes her home office containing confidential files and that she erected the barricade to protect those files.

Analysis

Regarding Tenant's application to be allowed more time to serve the Landlord:

The Tenant is clearly outside the three-day time limit, pursuant to section 59(3) of the Act, to serve the Landlord with the application and hearing package. However, I accept the Tenant's evidence that she was unaware that the package was ready to be picked up until late in the day on December 19, 2008. I therefore grant this part of the Tenant's application.

Regarding the Tenant's application to cancel the Notice to End Tenancy for Cause:

The Tenant provided a written document into evidence, a copy of a memo to the Residential Tenancy Branch on case file 723278. In this memo, she states:

“Ms. R entered my suite without proper notice and without my being present to remove a barrier I had erected across the common basement door into Ms. R's private basement area.”

The Tenant asserts that the laundry room was included in her private basement area, and in the same breath admits that the barrier was erected across the common basement door.

With respect to evidence, oral and written, where the Landlord and Tenant disagreed, the Landlord's testimony was forthright and direct. Her testimony was clearly presented and supported by documentation and photographs. The Tenant's testimony and documentation was contradictory and vague. The Tenant's testimony had internal inconsistencies and therefore, where there is a contradiction in the evidence, I prefer the evidence of the Landlord.

I therefore find that the laundry room was common property. Whether or not the Landlord has a separate laundry facility in the upstairs suite, the house was designed with three suites with lockable doors which all back on to the shared laundry room downstairs. Furthermore, the electrical box is located in the laundry room and the Landlord must have access to the electrical box. The Tenant admitted to erecting a

barrier to the Landlord's door and to installing metal brackets on the walls. The Tenant testified that she erected the barrier to protect the confidentiality of her files. The Tenant's files are not kept in the laundry room. They are in the second suite, behind a lockable door.

In erecting the barricade, the Tenant restricted the access of the Landlord to the electrical box and to the common area, in contravention of section 31(2) of the Act. The Tenant was given written notice to remove the barricade, but did not do so. When the Landlord gained access, via her own suite, to the common laundry room and removed the barricade, the Tenant put the barricade back up. The Tenant has jeopardized the safety and the lawful right of the Landlord, and therefore the Landlord has cause to end the Tenancy. I dismiss the Tenant's application to cancel the Notice to End Tenancy for Cause.

The Landlord requested an Order of Possession. The One Month Notice to End Tenancy for Cause was served on December 2, 2008. Section 47 (2) of the Act states:

"A notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.:

I therefore I grant the Landlord an Order of Possession effective January 31, 2009.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession effective January 31, 2009 and I hereby issue the order. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

January 16, 2009
