



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, CNC, MNDC, OLC, LRE, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damages or loss, and to recover the filing fee from the Tenant for this Application for Dispute Resolution. At the hearing the Landlord stated that he was seeking a monetary Order for unspecified damages.

He was advised that that his claim for unspecified damages would not be considered at this hearing, as he provided the Tenant with no details regarding the nature of this monetary claim.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End tenancy for Unpaid Rent, to set aside a Notice to End Tenancy for Cause, for a monetary Order for money owed or compensation for damages or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and to recover the and filing fee from the Landlord for this Application for Dispute Resolution. The Tenant filed a second Application for Dispute Resolution, in which the Tenant has made a second application for an Order requiring the Landlord to comply with the *Act*. At the hearing the Tenant withdrew all of her requests, except her request for a monetary Order for money owed or compensation for damages or loss and to recover the and filing fee from the Landlord for this Application for Dispute Resolution, as the Tenant has vacated the rental unit.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that he did not receive copies of the evidence that was submitted in evidence by the Tenant, although he acknowledged receiving Notice of Hearing documents on March 04, 2009 and April 14, 2009. The Tenant stated that she personally served her evidence on the Landlord on April 01, 2009 when they were both in the carpet of the residential complex. After reviewing the evidence submitted by the

Tenant, I find that all of the relevant evidence was also submitted by the Landlord so the question of service of evidence is moot.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute resolution, are whether the Landlord is entitled to a monetary Order for unpaid rent and to recover the filing fee from the Tenant for this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute resolution, are whether the Tenant is entitled to a monetary Order for compensation for loss of quiet enjoyment of her rental unit and to recover the filing fee from the Landlord for this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 24, 2009 and that it ended on April 25, 2009. The parties agree that the Landlord lives above the rental unit; that the two residences are connected by a staircase; that the door separating the staircase from the rental unit cannot be locked by the Tenant; that there is a laundry room at the bottom of the staircase that is shared by the parties; and that there is no door separating the laundry room from the rental unit.

The Landlord and the Tenant agree they did not have a written tenancy agreement, but they verbally agreed that the rental unit would be occupied by the Tenant and her daughter, and that the rent would be \$1,100.00.

The Landlord stated that he told the Tenant that her rent would increase to \$1,400.00 because he believed her boyfriend was living with her. The Tenant stated that her boyfriend is not living with her and that she never agreed to pay increased rent if the unit were to be occupied by another person. The Landlord submitted no evidence to establish that the parties had an agreement to increase the rent if the number of occupants in the rental unit changed.

The Landlord and the Tenant agree that the Tenant did pay monthly rent of \$1,100.00, although she did not pay rent for the month of April of 2009.

The Tenant is claiming compensation, in the amount of \$1,000.00, for the stress she experienced as the result of the Landlord's behaviour.

The Tenant stated that the Landlord entered her rental unit, without permission, on more than one occasion. The Tenant stated that the parties agreed that the Landlord

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could access the laundry room every Friday while she was at work and that he could access the furnace room, which is connected to the laundry room by a hallway, whenever he gave her reasonable notice. The Tenant stated that she placed a box in front of the door between the laundry room and the Landlord's residence and noticed that the Landlord had entered the rental unit on several occasions in contravention of their verbal agreement. The Tenant specifically denied asking the Landlord to provide access to the cable technician.

The Landlord stated that the parties agreed that he could use the laundry room on Fridays, that he could access the furnace room anytime he needed to, and that he was not required to give notice to access the furnace room. He stated that he never did access the rental unit without permission from the Tenant, except to do his laundry on Fridays and on one occasion when the Tenant asked him to provide access to the cable technician. On that one occasion, he stated that he "thought he heard" a knock on the door so he entered the rental unit to see if it was the cable technician, only to find that there was nobody at the door.

The Witness #1 for the Tenant stated that he is the Tenant's boyfriend and that he was frequently in the rental unit. He stated that he was in the rental unit on three occasions when he observed the Landlord enter the rental unit unannounced. On two occasions the Landlord asked to speak with the Tenant and on the third occasion he was walking toward the furnace room to retrieve personal items.

The Landlord submitted an undated letter that he wrote the Tenant, in which he stated that he "promised you that I would not invade yours or your daughters privacy". He expressed his concern about the Tenant continually placing boxes against the stairway door because it implies she does not trust him.

The Landlord submitted a note that he received from the Tenant in which she directed him not to enter her kitchen or rental unit. He stated that he received this note the day after the Tenant asked him to provide the cable technician with access to the rental unit.

The Tenant stated that she moved from the rental unit, in part, because of the harassing behaviour of the Landlord. She stated that the Landlord was rude to her; that he sent numerous letters and eviction notices; that he gossiped about her in the community; that he threatened to harm her boyfriend; and that he returned her mail to the sender.

The Tenant stated that approximately 3-4 weeks ago the Landlord threatened to hire someone to kill her boyfriend. She stated that she reported the incident to the police and that a police officer cautioned the Landlord regarding the remarks. The Landlord acknowledged that a police officer contacted him regarding the report made by the Tenant, which he denied making.

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The Witness for the Tenant#2, who is the Tenant's mother, stated that she is aware that the Landlord is gossiping about the Tenant in the community. The Witness for the Tenant #3, who was a personal friend of the Tenant's father, stated that he was speaking with the Landlord who angrily advised him the "he was not finished with her (the Tenant) yet". The Landlord acknowledged that he made this comment, but only in reference to the fact that he still needed to evict the Tenant.

The Tenant stated that the Landlord has been returning mail addressed to her at the rental unit, although she submitted no evidence in support of that allegation. The Landlord denies the allegation.

The Landlord submitted a letter he wrote the Tenant, dated February 18, 2009, in which he expressed concern that the Tenant's boyfriend was staying overnight too often and was parking in the driveway.

The Landlord submitted a letter he wrote the Tenant, dated February 25, 2009, in which he indicated that the tenancy would end on March 25, 2009; that he would be charging \$50.00 per night for every night there is an additional occupant in the rental unit; and that he would be towing the second vehicle that is parked in his driveway. In the letter he advised that Tenant that his daughter would be occupying the rental unit at the end of March.

The Landlord submitted a One Month Notice to End Tenancy, which was dated February 27, 2009. This Notice attempted to end the tenancy on March 31, 2009

Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,100.00. I find that the Landlord had no authority to increase the rent to \$1,400.00 and that the Tenant was required to pay \$1,100.00 for the duration of this tenancy.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. I therefore find that the Tenant is obligated to pay her rent, of \$1,100.00, for April of 2009.

I find, on the balance of probabilities, that the Landlord accessed the rental unit without authorization on more than one occasion. In reaching this conclusion, I considered the following:

- The testimony of Witness #1, who gave credible accounts of three occasions when he observed the Landlord enter the rental unit without notice
- The credible testimony of the Tenant who stated that she placed boxes in front of the door leading to her rental unit because she suspected the Landlord was

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accessing her suite when she was away, and that she found the boxes moved on several occasions

- The letter from the Landlord who expressed concern that the Tenant was placing boxes against the door that leads into the rental unit, which makes him feel that he is not trusted. This corroborates the Tenant's testimony that she placed boxes in front of the door to determine if the Landlord was entering her rental unit
- The note that the Tenant wrote to the Landlord, in which she advised him not to enter her kitchen or rental unit. I find it unlikely that the Tenant would have written this note if she had asked the Landlord to enter her rental unit, as alleged by the Landlord
- The testimony of the Tenant regarding the suspected address, which I found to be credible because she readily admitted that she did not actually observe the Landlord in the rental unit, which she would have been inclined to do if she was being dishonest

After considering the conflicting statements regarding access to the furnace area that can only be accessed by an insecure hallway in the rental unit, I find that the Landlord has submitted insufficient evidence to establish that the Tenant verbally agreed to allow him to access this area without notification. In reaching this conclusion, I was guided by the Court in *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000.

In *Bray Holdings Ltd. v. Black*, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find that it is unlikely that a Tenant, who lives with her young daughter, would agree to give the Landlord unrestricted access to a furnace room without receiving any notice of his intent to access that room, particularly when the Landlord has unrestricted access to the rental unit en route to that room. Considered in its totality, I favour the evidence of the Tenant over the Landlord in regards to the need for notification of the intent to access the rental unit.

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I find that the Landlord breached the Tenant's right to the quiet enjoyment of her rental unit when he entered the rental unit without notification on at least three occasions during this tenancy.

I find that the Landlord also breached the Tenant's right to the quiet enjoyment of her rental unit when he attempted to increase the rent from \$1,100.00 to \$1,400.00 and when he threatened to charge her a daily rate of \$50.00 for having a guest, neither of which is authorized by the *Act*.

I find that the breach of the Tenant's right to the quiet enjoyment of her rental unit significantly reduced the value of this tenancy, and I hereby award the Tenant compensation in the amount \$500.00.

In assessing the amount of compensation that is due to the Tenant as a result of the breach of her right to quiet enjoyment, I have not considered the allegations of gossip, as that is beyond my jurisdiction. I have also not considered the allegations of threats of violence against the Tenant's boyfriend or mail tampering, as I find that the Tenant has submitted insufficient evidence in support of those allegations.

I find that the Applications for Dispute Resolution of both parties have merit, and I therefore find that each party shall be responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,100.00, for unpaid rent from April of 2009. I find that the Tenant has established a monetary claim, in the amount of \$500.00, in compensation for the breach of her right to quiet enjoyment of her rental unit.

I have offset the two monetary claims and I hereby grant the Landlord a monetary Order for the difference of \$600.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: April 29, 2009.

Dispute Resolution Officer