

Decision

Dispute Codes: CNC, LRE, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Does the landlord have ground to end this tenancy?

Should the landlord's access to the rental unit be restricted?

Background and Evidence

The tenancy in question is a long one, having lasted for some 10 years. The rental unit is the upper floor of a home in which the lower floor was occupied by the previous landlord until his death. Upon the death of the previous landlord, his son took over management of the rental unit but stayed in the unit on the lower floor only sporadically until very recently. The landlord testified that he would stay in the lower floor unit for a few weeks each year. After the previous landlord passed away, the tenant had full access to the lower unit to permit him to adjust the home's only thermostat, access the breaker panel and check for mail. The parties had an arrangement whereby the tenant would forward any mail addressed to the landlord to a Vancouver address.

The landlord testified that he stayed in the lower floor unit during part of August 2009 and that at approximately 4:00 a.m. on August 15, he was awakened by the tenant who was in the lower floor unit with a flashlight adjusting the thermostat. The parties had a discussion about the incident and although their accounts differ on some points, they agree that the landlord told the tenant he was not to enter the lower floor unit without knocking while the landlord was staying there.

The landlord testified that he came to stay in the lower floor unit in mid-September and that on September 13, he discovered that water was dripping to the lower floor from above. The landlord testified that he tried to telephone the tenant several times, but the tenant did not answer the phone on one occasion and on the second occasion hung up on the landlord. The landlord testified that the tenant then telephoned and refused to

speaking with the landlord, instead speaking to the landlord's mother and advised that he would not grant the landlord access to the rental unit. On September 16 the landlord served a one-month notice to end tenancy (the "Notice") on the tenant. The Notice alleges that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and that the tenant has engaged in illegal activity that has jeopardized a lawful right or interest of another occupant or the landlord. The landlord testified that the tenant had changed the locks on a side entrance door and failed to give the landlord a key to the new lock and also that an interior door had been deadbolted from the tenant's side of the door, hindering the landlord's access to the rental unit. The landlord argued that this, in addition to refusing the landlord access, constituted illegal activity.

The tenant testified that he has always had access to the thermostat and that because he has never been advised by the landlord of the dates the landlord would be staying in the lower floor unit, he has not been concerned about creating a disturbance when accessing the lower floor unit. The tenant testified that he did not refuse access to the landlord, but demanded that the landlord provide proper notice in accordance with the Act. The tenant acknowledged that he changed the lock on the door, but testified that it was necessary because the old lock no longer worked the landlord had never raised the issue with him before and raised the point that the landlord had never asked him for a key although he reimbursed him for the cost of the lock. The tenant testified that the interior door did not have a deadbolt and that while it was locked, the landlord could have used a skeleton key to gain access.

The tenant seeks an order that the landlord's access to the rental unit be restricted. The tenant testified that the landlord has impeded the tenant's access to the unit by not removing snow and fallen tree branches in a timely fashion, not repairing the broken lock in a timely fashion and standing by the side of the house in a way that made it difficult for the tenant to walk around him. The tenant further testified that the landlord posted the Notice on the inside of the tenant's door, which showed the tenant that the landlord had entered the rental unit.

Analysis

In order to establish grounds to end this tenancy, the landlord must prove the cause alleged in the Notice. I accept that the tenant changed the locks on the door and did not

provide the landlord with the key, however it is clear that the landlord was aware of the changed locks and I am not satisfied that the landlord ever asked the tenant for a key. I find that the landlord cannot seek to end the tenancy on this basis when he reimbursed the tenant for the cost of the lock, thereby approving the lock change, and did not request a key. While tenants do not have the right to refuse access to the rental unit when the landlord seeks access pursuant to the provisions of the Act, I find that in this case the landlord sought access without giving the tenant 24 hours written notice. The only circumstances in which the landlord could have demanded access without such notice would be pursuant to section 29(1)(f) of the Act which permits a landlord to enter when an emergency exists and the entry is necessary to protect life or property. I am not persuaded that an emergency existed, particularly as the landlord indicated at the hearing that he had no concern that flooding would result from the drip, but merely wanted to discover the source of the leak. I find that an emergency which required the landlord to enter to protect his property did not exist and accordingly find that the landlord was required to give the tenant 24 hours written notice of entry. I find that the tenants' demand for written notice cannot be construed as an illegal act.

For these reasons I find that the landlord does not have grounds to end the tenancy and accordingly I order that the Notice be set aside and declare it to be of no force or effect. As a result, the tenancy will continue.

While the parties have been able to get along on a fairly informal basis up until this point, it is clear that the actions of both parties have damaged their relationship, creating a hostile environment which has led to both parties insisting on their strict legal rights and further demanding that the other strictly comply with their legal obligations under the legislation. I am not satisfied that an order restricting the landlord's access to the rental unit is required as the tenant provided only one example of the landlord having entered the unit without having given notice, and that instance involved opening and closing a door. I do not find that the other circumstances described by the tenant amount to the landlord having impeded the tenant's access to the rental unit. The landlord is reminded that 24 hours written notice is required to access the rental unit unless an emergency exists. The tenant is reminded that he must continue to provide access to the landlord or his agents when proper notice is given. I dismiss the tenant's claim for an order restricting the landlord's access to the rental unit.

I find that as the tenant has been partially successful, he is entitled to recover the

\$50.00 filing fee paid to bring this application. The tenant may deduct \$50.00 from future rent owed to the landlord.

Conclusion

The Notice is set aside. The tenant's claim to restrict the landlord's access to the rental unit is dismissed. The tenant may deduct \$50.00 from future rent owed to the landlord.

Dated November 06, 2009.
