

## **DECISION**

**Dispute Codes**      CNL, LAT

### **Introduction**

This hearing was convened by way of conference call on this date to deal with the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, and to permit the tenant to change the locks on the rented unit.

Both parties appeared with their agents/counsel, and witnesses gave evidence on behalf of the landlord.

### **Issues(s) to be Decided**

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Should the tenant be granted an order permitting her to change the locks on the residence?

### **Background and Evidence**

This tenancy began in July, 2007. Rent in the amount of \$600.00 per month is payable on the 1<sup>st</sup> day of each month. There are currently no arrears in rent.

The building is a heritage house with 2 suites on the 1<sup>st</sup> floor, 3 suites on the 2<sup>nd</sup> floor, and this tenant occupies the entire 3<sup>rd</sup> floor.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property in order to renovate the building. The landlord testified that the emergency escape

staircase is unsafe and doesn't meet the current building code. The staircase is on the outside of the building leading from this unit and once the renovations start, the staircase will be removed and there won't be any emergency exit. He further stated that

emergency repairs are required, and pursuant to Section 33 of the *Residential Tenancy Act*, he has an obligation and a right to complete the repairs.

The structural engineer testified that the south portion of the building has to be demolished and rebuilt, which includes the emergency escape staircase. When questioned about the actual condition of the staircase, the structural engineer testified that it is not in good condition now, but is reliable, and this is not an emergency repair. He also testified that this tenant's suite is not on the south side and won't be affected, but the emergency staircase from her unit will be affected, and suites under this tenant's unit will be affected. Two means of egress are required by code, and replacing the staircase with a temporary structure is not feasible. However, there is a fire escape on the 2<sup>nd</sup> floor, to which the tenant will still have access.

The landlord testified that he applied for the permits to complete the renovations sometime during the end of December, 2009 to the beginning of January, 2010, but there have been delays in getting the permits due to the Olympics. The landlord also stated that he contacted the City of Vancouver and a representative there stated that the issuance of the development permit would take 2 to 2 ½ months, and the building permit would take about 10 days after that.

The tenant's counsel stated that a check with the City of Vancouver on March 3, 2010 confirms that the landlord has applied for the permits, but they have not yet been issued. Further, the landlord cannot make an application for the building permit until the development permit has been issued. Counsel for the tenant argues that pursuant to Section 49 of the *Residential Tenancy Act*, the landlord can only issue the 2 Month Notice to End Tenancy for Landlord's Use of Property once all permits are in place.

With respect to the application for an order to change the locks on the unit, the tenant testified that during the summer of 2009, she was in her bed when 3 or 4 people walked in. She put a combination lock on the outside of the door when she moved into the unit, which was common practice for the tenants, and on January 26, 2010 she agreed to remove that lock at the request of the landlord, which she moved to the inside of her unit. She states that she does not trust the landlord to give 24 hours written notice to

enter her suite. She witnessed the landlord or landlord's repair persons going into a unit on the 2<sup>nd</sup> floor, and was told that the police were called on this occasion.

The landlord argues that on February 20, 2010 the landlord attended her unit to post a notice on her door and discovered that a pad lock was on the outside of the door. He knocked on the door, but received no answer. He stated that on several occasions, the tenant has not allowed access. A notice was posted on the door of the unit on January 6, 2010 to enter the unit on January 8. A copy of this notice, as well as several others, was provided as evidence. The tenant testified that she received the notice dated January 6, 2010, but no one showed up on the 8<sup>th</sup> of January as stated in the notice. The landlord also stated that she is not a healthy woman, and the landlord has concern for her health and safety, and putting a lock on the inside of her residence preventing access by the landlord is a safety issue for the tenant.

The tenant also testified that on January 8, 2010 she was hospitalized. She saw her doctor in the morning, and was admitted to hospital later that day and was released the following day. When questioned about being hospitalized the same day that she states no one showed up after the landlord had given notice, she replied that she was admitted to hospital later in the day.

### **Analysis**

Firstly, dealing with the tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property, the *Residential Tenancy Act* states that:

**49 (6)** A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Further, Section 33 states as follows:

**33 (1)** In this section, "**emergency repairs**" means repairs that are  
(a) urgent,

- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

I find that the landlord has prematurely issued the 2 Month Notice to End Tenancy for Landlord's Use because none of the permits are in place. I further find that the repairs to the staircase are not emergency repairs.

With respect to the application to change the locks on the unit, I refer to Section 29 of the *Residential Tenancy Act*:

**29 (1)** A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

The notice must be served in accordance with the *Residential Tenancy Act*. It is not deemed served until 3 days after posting it on the door or placing it in the mailbox or slot, and 5 days after mailing it. The landlord must calculate this time in addition to the minimum 24 hours required by law before entering the rented unit. The evidence before me that the landlord considered this extra time for posting such notices is unclear. In some cases, there appears to be enough time warranted, but not in other cases.

I recognize the fact that the landlord has had some difficulty getting ahold of the tenant in the past in order to give notice when entry to the unit has been necessary. However, the tenant also has an obligation to allow the landlord to inspect the unit or enter it for a reasonable purpose, which, in normal circumstances, should not be more than once per month. The tenant also has to recognize that the *Act* permits such inspections, and if notice is given in accordance with the *Act*, the landlord is within his rights to enter.

Section 31 of the *Act* only permits a change of locks to the residence if the landlord consents in writing, or the director has ordered the change. Due to the landlord's inability to enter the unit for emergencies if locks are changed, I find that ordering the change ought to be made in extreme circumstances, for the safety of the tenant and the necessity that may arise to protect life or property.

Further, the Residential Tenancy Policy Guideline #7 states that, "In some circumstances, where there has been substantial interference with the tenant's use and enjoyment of the property, it may be appropriate for the tenant to be awarded damages for unlawful entry in addition to, or rather than, a change of locks."

### **Conclusion**

The 2 Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled. The landlord is at liberty to reissue the Notice once all permits are in place, and the tenant will then be at liberty to reapply to cancel the Notice if she feels that it is necessary to do so in the circumstances at that time.

The tenant's application to change the locks on the rented unit is hereby dismissed, however, I do order that the landlord is required to comply with the *Act* by serving the notice and calculating the additional time for service, unless the tenant has given her express permission in writing to the landlord permitting entry with less than the 24 hours notice. I further order that the landlord restrict his entry into the unit to once per month, unless the tenant has given her express permission in writing to the land lord permitting entry more often, with the exception of real emergencies.

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: March 12, 2010.

---

Dispute Resolution Officer