

## **DECISION**

**Dispute Codes**      OPC, MND, FF  
                                 CNC, MNDC, LRE, LAT, FF

### **Introduction**

This matter dealt with an application by the Landlord for an Order of Possession and compensation for damages to the rental unit as well as to recover the filing fee for this proceeding. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause, for compensation for damage of loss under the Act or tenancy agreement, for an Order allowing her to change locks, for an Order prohibiting or placing restrictions on the Landlord's right to enter onto the rental property and to recover the filing fee for this proceeding.

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

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to compensation for damages to the rental property and if so, how much?
3. Is the Tenant entitled to compensation and if so, how much?
4. Are restrictions necessary on the Landlord's right to enter the rental property or rental unit?
5. Is the Tenant entitled to change locks on the rental property?

### **Background and Evidence**

The rental unit is a house on a two acre piece of property that also has a barn and another building that the Parties referred to as a shed, guest house or cabin. The tenancy started in approximately 2004. The current Landlord purchased the rental property in late-October 2008. The Parties entered into a fixed term tenancy agreement which started on May 1, 2009 and expires on April 30, 2010 with an option to continue on a month to month basis thereafter. Rent is \$650.00 per month which includes exclusive use of the main house, access to the grounds and some storage in the barn. The Tenant is responsible for paying hydro for the rental unit.

On January 31, 2010, an agent for the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated January 30, 2010. The Notice alleged the following grounds:

The tenant or a person permitted on the property by the tenant has:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk;
- Caused extraordinary damage to the rental unit or rental property.

### The Landlord's Claim:

The Landlord said that when she purchased the property she realized that it needed a lot of maintenance so she told the Tenant that she would come up from time to time to fix things and would stay in the cabin. The Landlord said the cabin had plumbing and electricity but not heat. During the winter of 2008/2009, the water line in the cabin froze. The damage caused by the frozen water line was repaired and the Landlord said she was advised to leave on a portable heater. The Landlord said the Tenant agreed to keep an eye on the heater and the Landlord asked her to let her know how much she would owe for hydro because there was only one meter. The Landlord said the Tenant did not object or appear to have any problem with this arrangement.

The Landlord said she had someone attend the cabin in October of 2009 to winterize the cabin and at the same time, they left the heater on. The Landlord went to the rental property again in early January 2010 at the request of the Tenant to clear snow off of the rental unit. At that time, the Landlord said she found that the lock on the cabin had been tampered with and had to be cut off and there was no electricity in the cabin. The Landlord said that the Tenant was not around and the rental unit door was unlocked so she looked at the breaker box by the front door and discovered that the breaker to the cabin had been shut off. The Landlord said that as a result of the loss of power, the water line froze again and caused water to leak in the bathroom and the food in the refrigerator and freezer to rot.

The Landlord said a few days later sent the Tenant an e-mail asking her what had happened and in response, the Tenant advised her that she did not intend to pay to heat the Landlord's storage area. The Landlord said she advised the Tenant at that time that she would be sending a plumber over to look at the water line to the cabin but the plumber showed up without advising her first. As the door to the cabin was locked, the plumber climbed through a window which was witnessed by the Tenant. Shortly thereafter, the Landlord said she received an e-mail from the Tenant advising her that the Tenant had placed a pad lock on the front gate to the property and that if the Landlord wanted access to the property she would have to provide prior notice. The Landlord also claimed that in July of 2009 the Tenant accused her of being verbally abusive to a guest of the Tenant's (which the Landlord denied) and told her that she was not welcome to stay at the cabin on the rental property as a "guest."

The Landlord said she hired a property manager to do a condition inspection report on January 22, 2010 and at that time he confirmed that the breaker to the cabin had been switched off again so he turned it back on. The property manager returned the following day with a plumber and again found that the breaker to the cabin had been switched off. The property manager again turned the switch back on and asked the Tenant not to turn it off. The Landlord said she is wary of making repairs to the damaged water line in the event the Tenant turns the hydro off to the cabin again.

The Landlord said that while the water soaked areas of the cabin smelled of mould she admitted that the full extent of the water damage was unknown at present but that it

would cost an estimated \$374.50 to repair a split ball intake ball valve in the water line. The Landlord also claimed that the Tenant has made it very clear that she does not want the Landlord on the rental property which has deterred the Landlord from doing much needed repairs.

The Tenant denied that she turned off the breaker to the cabin and claimed that it tripped on its own because it was not wired properly. The Landlord denied that this was the case as she claimed that the breaker to the cabin was separate and had its own amperage. The Landlord also noted that there had been no problems with this breaker tripping in the previous year even though the same heater and refrigerator were operating. The Tenant also argued that if the cabin had been winterized as the Landlord claimed, there should not have been any problem with water lines freezing. The Tenant further argued that the Landlord's repair estimate was unreliable because it was prepared by the Landlord's property manager who was not a plumber. The Landlord claimed that the estimate was prepared based on the information of a plumber who attended the cabin and viewed the damage with the property manager on January 23, 2010.

#### The Tenant's claim:

The Tenant admitted that the Landlord gave her \$50.00 in January 2009, a bottle of wine and \$150.00 approximately 2 weeks ago to compensate her for hydro. The Tenant argued, however, that she never agreed to pay for the Landlord's use of hydro to the cabin and that the Landlord should have compensated her \$321.40 for the increase in the hydro usage for November 2008 to present. The Tenant admitted that she was unsure if increased user rates may have contributed to the increased amount of her bills. The Landlord claimed that she also paid the Tenant \$20.00 cash and gave her a bottle of wine on April 17, 2009 and that based on BC Hydro's estimates of the consumption of hydro for a heater and refrigerator, the Tenant had been fairly compensated by receiving \$210.00.

The Tenant claimed that the Landlord entered the rental unit without her knowledge or consent on at least 2 occasions, one of them being on January 2, 2010. The Tenant could not recall the other occasion but referred to the plumber entering the cabin at some point in January 23, 2010 without any prior notice. Consequently, the Tenant said she put a lock on the front gate to prevent "intruders" from entering onto the property but removed it when the Landlord threatened to contact the RCMP.

The Tenant also admitted that she told the Landlord she did not want her staying at the rental property because she claimed that it interfered with her right to privacy. The Tenant argued that the cabin was only 4 feet away from the rental unit, was used by the previous landlord as a storage area and that a second residence was not permitted. The Tenant also argued that the Landlord was verbally abusive to her guests in July 2009. Consequently, the Tenant sought an order that the Landlord provide her with advance notice when she intended to visit the rental property to make repairs and that

the Landlord not be permitted to occupy the cabin. For similar reasons, the Tenant also sought an order permitting her to put a padlock on the front gate of the rental property. The Tenant admitted that the tenancy agreement does not grant her the use of the cabin or the exclusive use of the rental property.

The Landlord said that she always gave the Tenant 2 - 3 weeks advance written notice (by e-mail) of when she would be attending the rental property. The Landlord also claimed that she has not interfered with the Tenant's right to privacy but has limited her visits to the rental property to approximately 2 days each time. The Landlord claimed that in the past 6 months she has only attended the rental unit on four occasions; one day in July 2009, one day in August 2009 and two days in January 2010.

## **Analysis**

### **The Landlord's Claim:**

Although the Tenant denied that she turned off the breaker to the cabin, I find on a balance of probabilities that she did. In particular, I find that there was no problem with the breaker tripping over the winter of 2008/2009 and therefore I find it unreasonable that the breaker would all of a sudden, and for no discernable reason start to trip over the winter of 2009/2010. Furthermore the Landlord sent the Tenant an e-mail dated January 5, 2010 suggesting that the breaker had tripped however in her responding e-mail to the Landlord dated January 6, 2010, the Tenant stated, "the breaker did not go out on its own" and that she was not prepared to pay for heating the Landlord's storage.

I also find it significant that the problems with the breaker correspond with a breakdown in the Parties' relationship. In particular, I find that the Tenant had no problem with the Landlord compensating her for the use of the hydro for the winter of 2008/2009 to keep a heater running in the cabin. It was not until approximately July 2009 that the Parties' relationship began to deteriorate as the Tenant became increasingly upset with the Landlord's and her agents' presence at the rental property. Thereafter the Tenant advised the Landlord that she was not welcome to stay at the cabin and took then took the position that she did not agree to the Landlord compensating her for hydro.

Although the Tenant argued that if the cabin was winterized the water line should not have frozen, I find that this is in contradiction to the affidavit evidence of the Landlord's repair people who recommended this measure in addition to winterizing procedures. While I find that the Tenant is responsible for the damage to the water line and the associated cost to repair it, I find that there is insufficient evidence at this time of extraordinary damage having been done to the rental property or that the Landlord's property has been put at significant risk as a result of the Tenant turning off the electricity to the cabin. In particular, the Landlord admitted that the extent of the water damage (if any) is unknown at this time.

It is unconscionable for a Landlord **to require** a Tenant to pay for utilities for another suite where there is only one meter for the rental property. However, a Tenant can agree to do so and in the circumstances of this case, I find that the Tenant did initially agree to allow the Landlord to use the hydro for the cabin in exchange for compensation and did not advise her of any change to that agreement. Although the Tenant argued in her written submissions that it was not until January 2, 2010 that she discovered that the Landlord had not installed a separate meter, I find that argument unlikely as the Tenant would have been aware of the installation (given the building is only 4 feet away from the rental unit) and a meter would likely have been visible on the exterior of the building.

With respect to the final ground of the Notice, I find that the Tenant has seriously jeopardized a lawful right of the Landlord. In particular, the Landlord and her agents have a right under s. 29 of the Act to enter onto the rental property for the purpose of maintaining and repairing it. In the absence of a term of the tenancy agreement granting the Tenant any right to use the cabin, I also find that the Landlord and her guests are entitled to occupy it periodically as long as they did not interfere with the Tenant's right to quiet enjoyment under s. 28 of the Act. There was no evidence from the Tenant that the Landlord or her guests at any time caused a disturbance or interfered with her use and enjoyment of the rental unit. Rather, the Tenant's objection was that the Landlord invaded her privacy by staying in the cabin when attending to repairs. Although the Tenant claimed that her co-Tenant moved out because of infringements on their privacy by the Landlord, I find that there is no evidence to corroborate this.

Instead, I find that the Tenant has obstructed the Landlord's attempts to repair and maintain the plumbing in the cabin by repeatedly turning off the breaker or power supply to the heater. The Tenant is entitled to reasonable advance notice that the Landlord or an agent of the Landlord's will be attending the rental property and I find that this was done on all but 2 occasions. On one occasion, the Landlord claimed there was an emergency because the breaker was off, the water line was damaged and the cabin had flooded. On the second occasion, a plumber attended the property without the Landlord's knowledge. Consequently, I find that the Landlord has substantially complied with s. 29 of the Act. The Tenant has made it clear to the Landlord and made it clear at the hearing that the Landlord's presence at the cabin on the property will not be tolerated and she has gone as far as to lock the Landlord out of the rental property by temporarily putting a lock on the gate without her consent.

As a result, I find that the Tenant will likely continue to be hostile to the Landlord and create obstacles to her staying on the rental property to make repairs as long as the tenancy continues. Consequently, I find that there are grounds for issuing the One Month Notice to End Tenancy for Cause dated January 30, 2010 and as a result, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect on March 31, 2010.

### The Tenant's Claim:

As indicated above, the Tenant's application to cancel the One Month Notice to End Tenancy for Cause is dismissed. As the tenancy will be ending, the Tenant's application for an order restricting the Landlord from having access to the rental unit or the rental property is dismissed. In the interim (ie. until the tenancy ends), the Landlord must comply with s. 29 the Act by giving the Tenant 24 hour's written notice of entry onto the rental property which must be for a reasonable purpose (unless there is an emergency).

The Tenant's evidence shows that there was a spike in her hydro bill for the months of January, February and March 2009. The Tenant attributed this increased usage to the Landlord's use of a heater in the cabin but admitted that she did not know if user rates could also have contributed to this increase. The Landlord provided evidence from BC hydro showing what the normal hydro consumption and cost would be for a heater and refrigerator. Given the conflicting evidence of the parties and in the absence of any evidence to resolve this contradiction, I find that the Tenant has not made out her claim for compensation and it (along with her application to recover the filing fee for this proceeding) is dismissed.

### Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession to take effect on March 31, 2010 at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

The Landlord will also receive a monetary order in the amount of \$424.50 representing the cost of plumbing repairs at \$374.50 plus the \$50.00 filing fee for this proceeding. A copy of the monetary order must also be served on the Tenant and may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 17, 2010.

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Dispute Resolution Officer