

## **Decision**

**Dispute Codes:** CNR, MNDC, OLC, LRE, FF

### **Introduction**

This hearing dealt with an application by the tenant. The application was twice amended after its original submission. In the current application the tenant seeks i) cancellation of the landlord's notice to end tenancy for unpaid rent or utilities, ii) a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, iii) an order instructing the landlord to comply with the Act, regulation or tenancy agreement, iv) an order suspending or setting conditions on the landlord's right to enter the unit, and v) recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from April 2, 2009 to March 31, 2010. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$1,375.00 is payable in advance on the first day of each month. A security deposit of \$687.50 and a pet damage deposit of \$687.50 were collected on March 2, 2009.

Arising from rent which was unpaid when due on June 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated June 4, 2010. The tenant testified that he subsequently vacated the unit on June 16, 2010, and he did not therefore dispute the landlord's oral request for an order of possession, which will be further addressed below in the Analysis. During the hearing the tenant provided his current mailing address.

As the tenant has vacated the unit and as he did not dispute the landlord's oral request for an order of possession, the following aspects of the tenant's application are hereby set aside: i) application to cancel the notice to end tenancy for unpaid rent or utilities, ii) application for an order instructing the landlord to comply with the Act, regulation or tenancy agreement, and iii) application for an order suspending or setting conditions on the landlord's right to enter the unit. The tenant acknowledged during the hearing that prior to vacating the unit, he changed the locks on the unit without either the landlord's consent or an order from the director.

The tenant alleges there were statutory breaches arising from the landlord's plan to show the unit to prospective buyers. In the result, aspects of the tenant's application which remain before me are the application for monetary compensation, which include the alleged breach of the right to quiet enjoyment, as well as "estimated expenses for finding a new residence and contracting a moving firm," and recovery of the filing fee.

The landlord and the tenant initially agreed to a schedule of showings limited to 2 occasions per week, each limited to 90 minutes, "one mid-week and the other on Saturdays," for the period from approximately April 4 to May 4. The landlord testified that actual showings during that time were limited to 3.

Subsequently, the landlord gave notice to the tenant of scheduled times for showing the unit for the period May 7 to May 21. It is understood there may have been an extension of the same schedule after May 21. In summary, there were 4 occasions scheduled per week, each limited to 90 minutes. The landlord testified that actual showings for the period from May 6 to June 15 were limited to 2.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and made preliminary attempts to achieve a resolution. However, despite their efforts the parties were unable to resolve the dispute, and the landlord indicated that a landlord's application for dispute resolution will be made. It is anticipated that the landlord's application will address matters not presently before me

which include, but are not necessarily limited to, unpaid rent or utilities for June, costs related to the installation of new locks / re-keying, costs incurred for any cleaning and repairs which may be required in the unit, and disposition of the security / pet damage deposits.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated June 4, 2010.

While the tenant filed an amended application to dispute the notice within 5 days following its receipt, there is no evidence that the outstanding rent was paid within 5 days following its receipt. During the hearing the tenant stated that he no longer either resides in the unit, or disputes the 10 day notice, and the landlord made an oral request for an order of possession. Arising from all of the foregoing, I find that the landlord is entitled to an order of possession.

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 addresses “Right to Quiet Enjoyment,” and provides in part that, “Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.”

Section 29 of the Act speaks to **Landlord’s right to enter rental unit restricted**, and provides in part:

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 time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Residential Tenancy Policy Guideline # 7 addresses “Locks and Access,” and provides in part:

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A “reasonable purpose” may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a “reasonable purpose” may lose its reasonableness if carried out too often. Note that under the *Act* a landlord may inspect a rental unit monthly.

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant’s quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord’s right of entry be exercised only on conditions.

After the tenant’s original application, events transpired such that by the time of the hearing, the dispute related to whether conditions should be set on the landlord’s right to enter the unit was no longer directly before me. Specifically, as earlier stated, the landlord issued a notice to end tenancy for unpaid rent or utilities and the tenant then vacated the unit.

The crux of the tenant’s remaining concern appears to be twofold: first, that as the actual showings were limited in number at the outset of the process, there was no requirement to increase the scheduled occasions per week from what were originally 2, to what later became 4.

Further, as the tenant insisted that that either he or his partner be present in the unit on the occasion of any scheduled time for showing, when either his or his partner’s schedule did not permit a presence during those times, the tenant objected to the schedule. The “need to be present” arose out of a wish to “protect our property and our right....to quiet enjoyment of the condo.” The tenant’s insistence that either he or his

partner be present appears to have led to the experience of inconvenience, despite the evidence that actual showings were limited in total to 5 for the overall period in question from April 4 to June 15, and despite the absence of a legislative requirement that the tenant be present.

Based on the documentary evidence and testimony of the parties, and in consideration of the relevant legislative provisions and policy guidelines, I find there is insufficient evidence to support the tenant's allegation that the landlord breached either section 28 or 29 of the Act, the specific provisions of which are set out in part above. Accordingly, I hereby dismiss the application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement. As the tenant has not succeeded in this application, I hereby also dismiss the application for recovery of the filing fee.

### **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service upon the tenant. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application is hereby dismissed.

DATE: June 24, 2010

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Dispute Resolution Officer