

DECISION

Dispute Codes

Tenant: ERP, LRE, OLC, RP, RPP, CNC, MNDC
Landlord: OPC, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for an Order of Possession for cause, a monetary order for money owing or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for an order that the landlord make emergency repairs for health or safety reasons, that the landlord make repairs to the unit, site or property, for an order suspending or setting conditions on the landlord's right to enter the rental unit, for an order that the landlord comply with the *Act*, regulation or tenancy agreement, for an order that the landlord return the tenant's personal property, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order cancelling the notice to end tenancy.

The landlord was represented by her daughter, who gave affirmed testimony and was subject to cross examination by the tenant. The tenant also gave affirmed testimony and was subject to cross examination by the landlord's agent.

The landlord submitted an evidence package which was received by this office 4 days in advance of the hearing, and another package which was received the day of the hearing. At the outset of the hearing the tenant stated that the evidence received by the landlord late should not be considered, in that the tenant has had no opportunity to respond or prepare her defence with respect to that evidence. As a result of the perceived prejudice by the tenant, I decline to consider any evidence that was not provided in accordance with the Rules of Procedure which require that the parties provide to the Dispute Resolution Officer, and the other party all evidence that they

intend to rely on at least 5 clear days in advance of the hearing. Therefore, the only evidence considered by me is evidence that has been received by me by June 26, 2010 or earlier.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a monetary order for money owing or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?
- Is the tenant entitled to an order that the landlord make emergency repairs for health or safety reasons?
- Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?
- Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlord return the tenant's personal property?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

This fixed term tenancy began on May 1, 2010 and is to expire on May 1, 2011. Rent in the amount of \$2,400.00 is payable in advance on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$1,200.00 about

10 days prior to taking possession of the rental unit, as well as a pet damage deposit in the amount of \$1,200.00 in excess of 30 days after the commencement of the tenancy. Neither party was able to provide me with the date that those deposits were collected by the landlord.

The rental unit is the main floor and 2nd story of a house which also contains a basement suite. The landlord resides in the basement suite. Included in the tenancy is use of the back yard, Jacuzzi and barbeque. The landlord also gave the tenant permission to store some items in the garage.

The landlord's representative testified that the tenant's dog has been barking alot, and the landlord started to keep notes of the issues in dispute with the tenant, including the barking dog. A copy of those events was provided in advance of the hearing. She also testified that the tenant has been following the landlord and her guests around the yard with a camera. She stated that the tenants' aggressiveness has caused the landlord to change her lifestyle to avoid the tenant.

The landlord's agent further testified that at the time the tenant moved in, a condition inspection was conducted and the unit was in good condition, however the tenant has been complaining about repairs being required, and on June 5, 2010, the tenant demanded that the landlord replace the railing on the deck, and then complained about disturbances. She also demanded that a lock be installed on the door in the stairway that separates the suites. The landlord made arrangements to have that done and gave the tenant notice of those repairs on June 14, 2010 in writing by placing the notice in her mailbox. However, the tenant completed that work herself on June 15, 2010.

On June 14, 2010 the landlord was in the process of removing some items from the back yard at the request of the tenant. The tenant filmed her and her daughter doing it, and invaded their personal space. The daughter called 9-1-1 and while on the phone she stated that the tenant had her mother cornered in the garage. The 9-1-1 operator told the daughter to go into the garage. The tenant left but came back with her camera and yelled at the landlord about not having internet access. The police arrived, and eventually re-set the modem for the tenant and the internet issue was resolved. The

landlord feels that she's been unreasonably harassed by the tenant and is claiming \$2,000.00 in damages.

The tenant testified that she had been served with a 1 Month Notice to End Tenancy for Cause after she had applied for dispute resolution. She admitted taking pictures of the landlord on 2 occasions. She stated that she was not able to enjoy the back yard and started to take pictures after the third time the landlord was carrying chemicals, wiring and other such items out of the back yard.

She further testified that her claim for an order that the landlord make emergency repairs for health or safety reasons relates to the fact that the railing was loose on the porch, and for the removal of items in the yard. Those matters have been completed by the landlord.

With respect to the application by the tenant for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant testified that the landlord has demanded rent in cash, and will not show the tenant how to use the Jacuzzi, which is part of the tenancy agreement. She stated that she asked the landlord to show her how to use it, but she refused, and told the tenant that she should go to Beachcombers, a spa sales and service location, which she did, but they didn't know how to use it either. She also took a picture of the unit to the service location, and sent emails to the landlord, however has received no response and has not been able to use the Jacuzzi.

She further testified that the door between the suites can only be opened with a key. She found it unlocked, so locked it and told the landlord that something should be done about it. The door can only be opened on the tenant's side with a key, and she does not have a key. She stated that the landlord accused her of intruding into her suite.

The tenant further testified that the repairs required to the unit include loose handles on the kitchen cabinets and the dryer duct is held with duct tape. She stated that she notified the landlord about the required repairs, and shortly thereafter, the landlord attended the rental unit ringing the doorbell repeatedly while the tenant was in the bathtub. The landlord wanted to fix the electrical wiring which was exposed on a wall

due to some candle holders taken by the landlord. The landlord sent an email to the tenant the next day saying that emergency repairs were required. The tenant provided the landlord with 3 dates over the next 3 days that would be fine. Those dates were not convenient to the trades people that the landlord was able to hire.

Analysis

Firstly, dealing with the landlord's application for an Order of Possession, I do not have a copy of the 1 Month Notice to End Tenancy for Cause that was issued to the tenant. It is imperative that that information is before me in order for a proper ruling to be made on the validity or legality of the notice. Therefore, I must dismiss that portion of the application.

With respect to the landlord's application for a monetary order for money owing or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I have heard no evidence with respect to a loss of revenue. There are no rental arrears, and I heard no evidence, other than the landlord's testimony of a possible loss of revenue, which has not been proven. That portion of the landlord's application must also be dismissed, as well as the landlord's application to retain the security deposit in partial satisfaction of this claim.

The *Residential Tenancy Act* states that the landlord must maintain the property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and make it suitable for occupation by a tenant. The only evidence that I have heard with respect to repairs required that have not already been completed by the landlord are loose handles on the kitchen cabinets, and the duct behind the dryer is held with duct tape. I do not find that these repairs are required in order to maintain the property in compliance with health, safety and housing standards required by law, nor do I find that those items make the unit unsuitable for occupation by a tenant. Therefore, the tenant's application for repairs must be dismissed.

Further, with respect to emergency repairs, I find it necessary to advise both parties that emergency repairs, as described in Section 33 are those that are urgent, necessary for

the health or safety of anyone or for the preservation or use of residential property. I have heard evidence that the landlord attempted to have emergency repairs completed, but I find that those repairs did not fall within the criteria of emergency repairs. Therefore, the landlord must give the tenant 24 hours written notice to do other repairs, and the tenant must allow the landlord to do those repairs.

The *Residential Tenancy Act* states that:

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 give 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).

With respect to the tenant's application for an order that the landlord return personal property, I have heard no evidence of any personal property that might be held by the landlord, and therefore, that portion of the tenant's application must be dismissed.

The tenant has applied for a monetary order in the amount of \$1,500.00 as rent abatement for not being able to use the Jacuzzi and for the landlord's failure to comply with the *Act*. I cannot find that the use of the Jacuzzi is a material term of the tenancy however I do find that the tenant is entitled to the use of it as evidenced by the written tenancy agreement. If the tenant were to use it improperly, it may result in a claim by the landlord with respect to damages on the unit, and the parties would be back before a Dispute Resolution Officer when the tenancy ends. Further, such damage claims

must be proven to include what the landlord did to mitigate any damages, and refusing to show the tenant how to use the Jacuzzi would not advance any claim. The Residential Tenancy Branch Rules of Procedure states that the purpose of dispute resolution process is to enable the Director of the Residential Tenancy Branch to assist a landlord and a tenant to resolve a dispute without the need for a formal dispute resolution proceeding, and I find it prudent to deal with the issue before it becomes a damage claim. Therefore, I find that the landlord is required to show the tenant how to use the Jacuzzi, and the landlord ought to have done that shortly after the tenancy began. I find that the tenant has been entitled to the use of the Jacuzzi since the beginning of the tenancy, and is entitled to rent abatement in the amount of \$50.00 per month, for a total of \$150.00. The tenant is also entitled to the benefit of that abatement for every month that the landlord refuses to show the tenant how to use it. I also order that the tenant be permitted to reduce future rent in the amount of \$50.00 per month until shown.

Conclusion

The landlord's application for an Order of Possession is hereby dismissed, and the notice to end tenancy is hereby cancelled.

The landlord's application for a monetary order for money owing or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The landlord's application to retain the security deposit in partial satisfaction of the claim is hereby dismissed.

With respect to the balance of the tenant's application, I hereby order that the landlord comply with the *Act*, and specifically, Section 29 as it relates to entry into the rental unit, as described above.

I further order that both parties comply with the *Act*. A booklet entitled "A Guide for Landlords and Tenants in British Columbia" is attached for the benefit of both parties for this tenancy and future tenancies. With respect to the tenant's application for an order

that the landlord comply with the *Act* with respect to how rent is paid, it's important to note that the *Act* permits the payment of rent in cash, however it requires the landlord to issue a receipt for all payments made by cash, and I order that the landlord provide the tenant with a receipt for all payments made by cash.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby allowed at \$150.00. I further order that the tenant be permitted to reduce the August, 2010 rental payment by that amount, and future months by \$50.00 if the landlord does not show the tenant how to properly use the Jacuzzi before another rental payment becomes due.

Since neither application has been fully successful I decline to award recovery of the filing fee to either party.

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: July 27, 2010.

Dispute Resolution Officer