



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC OLC LRE LAT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain Orders to cancel a 1 Month Notice to End Tenancy issued for cause, to have the Landlord comply with the Act, suspend or set conditions on the Landlord's right to enter the rental unit, authorize the Tenant to change the locks to the rental unit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord at the rental unit on October 5, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Is the 1 Month Notice to End Tenancy upheld or is it cancelled?
2. Is the Landlord ordered to comply with the *Residential Tenancy Act* (Act)?
3. Has the Landlord's right to enter the rental unit been suspended or are their conditions now set on the Landlord?
4. Is the Tenant permitted to change the locks to the rental unit?

Background and Evidence

I heard undisputed tenancy that the month to month tenancy agreement was effective August 1, 2010. Rent is payable on the first of each month in the amount of \$620.00 and the Tenant paid a security deposit of \$310.00 on July 18, 2010.

The Landlord stated that he attended the downstairs rental unit the evening of September 27, 2010 to investigate a water leak complaint. He could not determine the source of the leak so he attempted to go into the upstairs unit but was refused access by the Tenant. The Landlord stated that he told the Tenant he needed access to the unit for an emergency and when she refused he did not argue with her and told her the water was shut off for the entire house for the evening and he left. He attended the downstairs rental unit the next morning and looked inside the wall to attempt to find the leak but there was no leak found. He confirmed that between September 27 and September 30th there was no indication of another water leak. Then the evening of September 30th he was told by the downstairs tenant that the water was leaking again and it is due to the upstairs shower being broken.

He argued that the Tenant did not tell him directly that her shower head was broken, rather she informed the downstairs tenant of this problem who then informed the Landlord the evening of September 30, 2010. The Landlord confirmed that the water leaking was intermittent.

The Landlord argued that the Tenant refused him access to her unit for five days so he issued her a Notice to cancel the tenancy. The Landlord and Agent initially testified that the 1 Month Notice to End Tenancy was served personally to the Tenant, from the Landlord's hand to the Tenant's hand on October 1, 2010. Later in the hearing the Landlord changed his testimony and stated that he attended the rental unit on October 1, 2010 and knocked on the door. When the Tenant failed to answer the door the Landlord entered the rental unit and taped the 1 Month Notice encased in a plastic bag to the inside of the door. He then proceeded to change the shower head in the rental

unit. The Landlord confirmed that he did not give the Tenant written notice to report all issues to him directly and not other tenants and he did not post 24 hours notice of entry before entering the Tenant's rental unit on October 1, 2010. He claimed that he was told by the Tenancy Branch that he could enter the rental unit with his key if the Tenant was not home.

The Tenant testified that her statement of events which she provided in her evidence is exactly what happened. In response to the Landlord and Agent's testimony she argued that when the Landlord knocked on her door the evening of September 27, 2010, she had just completed her shower and was not dressed, and he never mentioned there was an emergency nor did he indicate to her that there was a water leak coming from her rental unit. She was under the impression that there was something going on elsewhere in the home and that the Landlord just came to tell her the water was going to be shut off for the evening. She clarified that she did not refuse the Landlord access to the unit for five days rather she let the Landlord into the unit the next morning, September 28, 2010, and he did not find anything wrong in her unit. She argued that she was not aware of any water problems until September 30, 2010, after she completed her shower and went out on her step and the downstairs tenant informed her that he had another water leak coming from upstairs and he was on his way to tell the Landlord. This is when she mentioned her cracked shower head and thought that since the downstairs tenant was going to see the Landlord he could tell him of her showerhead issue at the same time. She said she thought the issue of her broken shower head could wait as she had no idea it was flooding the basement. She confirmed she put tape on the shower head on September 30, 2010 as this was the second time she saw water spraying out of the shower head to outside of the shower area. She confirmed there was no water leak when the shower was turned off.

Analysis

I have carefully considered all of the testimony and evidence provided by both parties which included, among other things: a copy of the 1 Month Notice; the Landlord's typed

statement which included a chronological listing of events, a copy of the tenancy agreement, and a copy of the complaint letter dated October 7, 2010 from the downstairs tenant; a copy of the Tenant's typed statement which included a chronological listing of events between September 27 and October 8th; background information, a copy of the letter dated October 8, 2010 written by the Tenant to the downstairs tenant.

The Landlord has issued a 1 Month Notice to End Tenancy for reasons that the Tenant has caused extraordinary damage to the unit/site or property. The Landlord wrote on the Notice "water damage, refused to let landlord inside suite". The evidence supports that there was an intermittent water leak caused by a broken showerhead in the Tenant's rental unit; however there is no evidence before me to support that there was extraordinary damage caused as a result of this water leak.

I note that prior to issuing this Notice a Landlord must give the Tenant an opportunity to repair the damage. In this case there was no written notice issued to the Tenant advising her to repair damage.

Section 29 of the Act provides when a landlord may enter a rental unit as listed below:

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).

For the purposes of section 29(1)(f) listed above, emergency repairs means repairs that are urgent made for the purpose of repairing major leaks in pipes or the roof. If a Landlord wishes to gain entry into the rental unit for an emergency he has the obligation to ensure the Tenant understands that the situation is urgent. In this case the Tenant states that the Landlord did not inform her it was an emergency and when she told him he could not enter at that late hour of the evening he simply told her the water was off for the entire house for the night. I accept that the Tenant did not know there was a water leak issue or that it was being generated from her suite. The Landlord confirmed that he did not pursue the matter and simply walked away when the Tenant refused him access. On a balance of probabilities a reasonable person would not simply leave and go to bed if an urgent emergency was occurring. Therefore I do not find the incident of September 27, 2010 to be considered an emergency.

Upon consideration of all the evidence presented to me, I find the Landlord has failed to prove the causes for issuing the 1 Month Notice to End Tenancy issued on October 1, 2010 and the Notice is hereby cancelled.

The evidence supports the Landlord has entered the rental unit without complying to section 29, as listed above, therefore I hereby ORDER the Landlord to comply with the

Act. The Landlord is ordered not to enter the rental unit unless the requirements of section 29 of the Act are met.

With respect to the Tenant's request to suspend or set conditions on the Landlord's right to enter the rental unit and to authorize the Tenant to change the locks on the rental unit, I find the Tenant has provided insufficient evidence to warrant such orders and I hereby dismiss these requests.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord and Tenant to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The 1 Month Notice to End Tenancy is hereby cancelled and is of no force of effect.

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: November 04, 2010.

Dispute Resolution Officer