



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OLC, LRE, AAT, FF

Introduction

The tenant has submitted an application to cancel a Notice ending tenancy for cause, an Order the landlord comply with the Act, that limits be placed on the landlord's right to enter the rental unit, that the tenant and her guests be allowed access to the rental unit and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process.

The tenant submitted 36 pages of evidence to the Residential Tenancy Branch, sent via regular mail, received on December 9, 2011. The landlord received the evidence posted to her door on the evening of December 7, 2011. As this evidence was not submitted and received at least 5 days prior to the hearing it was not considered. The tenant was at liberty to provide testimony.

Issue(s) to be Decided

Should the Notice ending tenancy for cause issued on November 23, 2011, be cancelled?

Should the landlord be Ordered to comply with the Act?

Should access to the unit by the landlord be restricted?

Must the landlord be Ordered to provide access to the unit by the tenant and her guests?

Is the tenant entitled to filing fee costs?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on December 31, 2011.

The reasons stated for the Notice to End Tenancy were that the tenant has allowed an unreasonable number of occupants in the unit; that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful

interest of another occupant or the landlord and put the landlord's property at significant risk; that the tenant has assigned or sublet the rental unit without written consent and that the tenant did not pay a security deposit within 30 days as required by the tenancy agreement.

The tenancy commenced on November 1, 2010; rent is \$750.00 per month, due on the first day of each month. The tenant rented from the current landlord's mother, who recently passed away. There is no written tenancy agreement and the payment of a deposit is in dispute with the landlord now wishing to end the tenancy as a result of non-payment.

The tenant rents a 2 bedroom unit in the lower level of the landlord's home.

The landlord testified that she understands that a 2nd individual in the rental unit would not constitute an excessive number of occupants. The landlord believed that the tenant had sublet the unit, as she was away for a period of time and another individual had access the unit. The landlord acknowledged that the tenant has not sublet or assigned the unit.

The landlord stated that the tenant's guest left the outer door unbolted on at least 3 occasions. Once the landlord spoke to the tenant the door was then locked when the tenant was not in the unit. The landlord stated that the failure to lock the door placed the landlord and their children at risk, as the outer door provides access to an inner vestibule where separate, locked doors to the rental unit and the landlords' home are located.

The tenant acknowledged she changed the locks to the unit; once the landlord requested a copy of the key copies were given to the landlord. The tenant understands she must not change the locks without an Order or permission of the landlord.

The tenant stated she has not had any heat for the past month. The heat is provided via a forced air system. The landlord stated they have the thermostat set to approximately 67 degrees Fahrenheit. The landlord stated this was the first complaint she had heard in relation to heat; the tenant confirmed she had not discussed heat with the landlord. The landlord testified she would never deny the tenant heat. This matter will be investigated by the landlord.

The parties agreed that their relationship has become untenable; the landlord's partner now acts as her agent; the tenant has been asked not to communicate directly with the landlord.

The tenant stated the landlord's agent took a key away from her friend; this was the only key the tenant had. The landlord's agent also told the tenant's guest not to return to the unit. The landlord indicated they now understand the tenant is entitled to have guests.

The tenant believes that the landlord entered her unit and tampered with her computer. The tenant came home recently to find her bathroom mat soaked in water; leading the tenant to believe the landlord has been in the home. The landlord stated she is busy, has 2 small children and would never enter the unit without giving written notice, as they recently did, for the purpose of checking the smoke alarms and other safety issues.

The tenant stated the landlord gave her a written notice restricting use of the laundry; the notice was received on December 1, or 2nd, 2011; rent will be reduced by \$20.00 per month effective January 31, 2011.

The landlord testified her mother would not have taken a deposit from the tenant; someone she had considered a friend; but now wishes to end the tenancy as the tenant failed to pay a deposit. The tenant submitted she paid a deposit to the landlord's mother.

The tenant offered to vacate the unit by December 31, 2011, if the landlord would return December rent paid; the landlord declined this offer.

Analysis

After considering the testimony of the parties I determined that the landlord has provided insufficient evidence to show that the tenant should end for the reasons indicated on the Notice.

The relationship between the parties has deteriorated; the landlord has assumed the rental unit from her mother, there was no written tenancy agreement and events have unfolded which have caused problems between the parties.

In relation to Orders; I find that there are no grounds to issue any Order to the landlord or to restrict access to the unit as provided by the Act. The landlord must comply with section 29 of the Act by giving at least 24 hours written notice of entry, the reason entry is required and the time of entry.

The landlord will investigate the reported heat problem.

The landlord understands the tenant is entitled to have guests and that the presence of a guest does not constitute an unreasonable number of people in the unit.

The tenant has not assigned or sublet her unit; this was acknowledged by the parties.

The tenant has not jeopardized the health and safety of the landlord; once the landlord talked to her about bolting the door there were no further security breaches.

In relation to laundry, I find that the notice given restricting the laundry service is effective February 1, 2012, when rent will be reduced to \$730.00 per month. Until that time the laundry will be shared between the tenant and landlord.

The tenant has a key to the unit and may allow her guest to come and go from the unit keeping in mind the landlord's security concerns. The tenant understands she breached the Act by changing the locks to the unit; although I find this does not constitute sufficient reason to end the tenancy.

I have made no finding in relation to any deposit that may have been paid.

Therefore, in the absence of evidence that require Orders the landlord comply with the Act, the balance of the tenant's application is dismissed.

As the tenant's application had partial merit, I find that the tenant may deduct the \$50.00 filing fee from the next month's rent due.

I reviewed the process required when giving notice ending a month-to-month tenancy.

A copy of the *Guide for Landlords and Tenants in British Columbia* is enclosed for each of the parties.

I find that the parties are bound by the standard tenancy terms, as provided by the Regulation and have appended a copy to this decision.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47, I set aside the One Month Notice to End Tenancy, dated November 23, 2011, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenant will deduct the \$50.00 filing fee from the next month's rent due.

The balance of the application is dismissed.

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: December 14, 2011.

Residential Tenancy Branch

Schedule

[am. B.C. Reg. 234/2006, s. 22.]

Application of the Residential Tenancy Act

1 (1) *The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.*

(2) *Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.*

(3) *The requirement for agreement under subsection (2) does not apply to the following:*

(a) *a rent increase given in accordance with the Residential Tenancy Act;*

(b) *a withdrawal of, or a restriction on, a service or facility in accordance with the Residential Tenancy Act;*

(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Security deposit and pet damage deposit

2 (1) The landlord agrees

(a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,

(b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and

(c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless

(i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or

(ii) the landlord makes an application for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

(2) The 15 day period starts on the later of

(a) the date the tenancy ends, or

(b) the date the landlord receives the tenant's forwarding address in writing.

(3) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.

(4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

Pets

3 Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.

Condition inspections

4 (1) In accordance with sections 23 and 35 of the Act [condition inspections] and Part 3 of the regulation [condition inspections], the landlord and tenant must inspect the condition of the rental unit together

(a) when the tenant is entitled to possession,

(b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and

(c) at the end of the tenancy.

(2) The landlord and tenant may agree on a different day for the condition inspection.

(3) The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the Residential Tenancy Act.

(4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under section 23 and 35 of the Residential Tenancy Act.

Payment of rent

5 (1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

(2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

(3) The landlord must give the tenant a receipt for rent paid in cash.

(4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

Rent increase

6 (1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.

(2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.

[For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]

(3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.

(4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

Assign or sublet

- 7** (1) *The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.*
- (2) *If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the Residential Tenancy Act.*

Repairs

- 8** (1) *Landlord's obligations:*
- (a) *The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.*
- (b) *If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the completion and costs of the repair*
- (2) *Tenant's obligations:*
- (a) *The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.*
- (b) *If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.*
- (3) *Emergency repairs:*
- (a) *The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.*
- (b) *If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact*

person, and then give the landlord reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to 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, or

(v) the electrical systems.

Occupants and guests

9 *(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.*

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

Locks

10 *(1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.*

(2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.

(3) The tenant must not change locks or other means of access to

(a) common areas of residential property, unless the landlord consents to the change, or

(b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.

Landlord's entry into rental unit

11 *(1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.*

(2) The landlord may enter the rental unit only if one of the following applies:

(a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states

(i) the purpose for entering, which must be reasonable, and

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

(b) there is an emergency and the entry is necessary to protect life or property;

(c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;

(d) the tenant has abandoned the rental unit;

(e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;

(f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.

(3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

(4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

Ending the tenancy

12 *(1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month.*

[For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]

(2) This notice must be in writing and must

(a) include the address of the rental unit,

(b) include the date the tenancy is to end,

(c) be signed and dated by the tenant, and

(d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.

(3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.

(4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.

(5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.

(6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

Landlord to give tenancy agreement to tenant

13 *The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.*

Dispute resolution

14 *Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the Residential Tenancy Act.*

Note: *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

[Provisions of the Residential Tenancy Act, S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]