

DECISION

Dispute Codes: AAT

Introduction

This is the Tenant's application for an Order that the Landlord allow access to (or from) the rental unit for the Tenant or his guests.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord's agent with the Notice of Hearing documents by handing the documents to the Landlord's agent at the rental property on October 3, 2011. It was also determined that each party served the other with their documentary evidence in accordance with the service requirements set out in the *Residential Tenancy Act* (the "Act") and the Rules of Procedure.

Issues to be Decided

- Is the Tenant entitled to the Order sought, pursuant to the provisions of Section 30 of the Act?

Background and Evidence

The rental unit is one of 18 units in a building which is designated for seniors and persons with disabilities. The Tenant moved into the rental unit on March 1, 2006, and signed a tenancy agreement with the former landlord. On June 30, 2009, the Tenant and the current Landlord entered into a tenancy agreement. Copies of both tenancy agreements were entered in evidence. Photographs of the rental property were also provided in evidence.

The Tenant gave the following testimony:

The Tenant testified that in July, 2011, the Landlords installed chains to prevent the use of a path to the building. He submitted that he has used the pathway for the past 5 years. He stated that the former landlord also used the pathway since 1981, when the rental property was built. The Tenant submitted that the pathway is a "prescriptive easement" and that he uses the path to go around the outside of the building, to walk to town, or get to his truck.

The Tenant testified that he feels claustrophobic in the hallways at the rental property, so he uses his back door to come and go from his home. The Tenant's back door leads to the pathway around the building, through a grassy area. The Tenant submitted that it is substantially inconvenient for him to have this access blocked off.

The Tenant testified that he does volunteer work in his community and frequently needs to carry tables, chairs and other objects to and from his truck. He stated that the chain makes this very difficult. He testified that by using the pathway rather than carrying the objects through the hallway to the entrance of the building saves the walls and doorways from damage and eliminates noise for the other occupants in the building.

The Tenant testified that his friends are also accustomed to visiting him via the pathway. The Tenant asked that the Landlord be ordered to remove the chain.

The Landlord provided the following testimony:

The Landlord testified that she was approached by 3 other residents of the rental property in June of 2011, who expressed safety concerns with respect to the pathway. She testified that they advised her that the pathway was becoming a public access point to a creek and that it was not lit well enough at the back of the building.

The Landlord stated that she investigated and determined that she would have to remove potential dangers by repairing existing motion detector lights and installing chain link to stop people from using the path at the side of the building. The Landlord testified that the path had developed over years of improper use.

The Landlord submitted that use of the path was dangerous because:

- it was not maintained by the Landlord and was very slippery when wet;
- it was difficult to manoeuvre on the path; and
- it had become a nuisance due to the public access behind the building, posing a security risk to her tenants.

The Landlord stated that since the chain was installed, no other tenant has complained or asked the Landlord to remove the chain.

The Landlord testified that the Tenant parks his truck in front of the building's entrance and that the Tenant has easy access to his truck using the proper entrance and exit. She stated that there are two doors the Tenant would pass through (the front door and a fire door) before the arriving at his door. The Landlord testified that the path is not a

designated access point to the rental unit and that its use poses significant safety risks to the tenants at the rental property.

The Tenant provided the following reply:

The Tenant testified that using the front door and fire door was awkward when bringing groceries in and that it was easier to “skip around the back”. The Tenant stated that he has to climb around a railing in order to use the path now that the chain is up.

The Tenant stated that he lives at the rental property and has never seen the public using the path as a thoroughfare. The Tenant commented that “no other people use the path” and that the path was “my path”. The Tenant stated that he knew how to look after himself and was not concerned about safety issues.

The Tenant submitted that the path was only a 10 degree grade and that even if someone slipped when it was wet, they had “nowhere to fall to”. The Tenant stated that none of the other tenants that he has spoken to have expressed concern about the public using the path.

Analysis

The Tenant submitted that the pathway is a “prescriptive easement” and that he uses the path to go around the outside of the building to walk to town or get to his truck.

A prescriptive easement is an easement upon another's property acquired by continued use without permission of the owner for a period provided by law to establish the easement.

In some jurisdictions, it may be possible to acquire easement rights by prescription, however it is no longer possible to acquire easement rights by prescription in B.C. Section 24 of the *Land Title Act* provides:

Title by prescription abolished

- 24 All existing methods of acquiring a right in or over land by prescription are abolished and, without limiting that abolition, the common law doctrine of prescription and the doctrine of the lost modern grant are abolished.

In any event, the Residential Tenancy Branch has no jurisdiction to grant a prescriptive easement.

The Tenant seeks an Order that the Landlord remove the chain from the path to allow access to (or from) the rental unit to the Tenant and his guests, pursuant to the provisions of Section 30 of the Act. Section 30 of the Act provides:

Tenant's right of access protected

30 (1) A landlord must not **unreasonably** restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

(2) A landlord must not **unreasonably** restrict access to residential property by

(a) a candidate seeking election to the Parliament of Canada, the Legislative Assembly or an office in an election under the *Local Government Act*, the *School Act* or the *Vancouver Charter*, or

(b) the authorized representative of such a person who is canvassing electors or distributing election material.
(emphasis added)

I do not find that the Landlord has unreasonably restricted access to the rental property or to the rental unit. Based on the testimony and the documentary evidence provided by both parties, I find that the Tenant has safe, suitable access to the rental property, his suite, and his truck. I accept the Landlord's submissions that the path is not maintained by the Landlord and that it is slippery when wet. I accept the Landlord's submission that the path is unsafe and that the Landlord could be held financially responsible for injury to anyone using the path if its use was not dissuaded.

Therefore, for the reasons provided above, I dismiss the Tenant's application.

Conclusion

The Tenant's 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: November 04, 2011.

Residential Tenancy Branch