Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC RP PSF LRE RR FF

Preliminary Issues

After reviewing the Tenant's application for dispute resolution, at the outset of the hearing, the Tenant confirmed he wished to amend his application to request to cancel the 1 Month Notice to End Tenancy for Cause which was personally served to him on December 9, 2011.

The Landlord was in agreement to this amendment and affirmed she was prepared to have this request heard today. Based on the aforementioned I approve the Tenant's request to amend the application to include the request to cancel the 1 Month Notice to End Tenancy for Cause (the Notice), pursuant to # 23 of *Residential Tenancy Policy Guidelines.*

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel the 1 Month Notice for Cause, to seek Orders to have the Landlord comply with the Act, regulation or tenancy agreement, to have the Landlord make repairs to the unit, site or property, provide services or facilities required by law, suspend or set conditions on the Landlord's right to enter the rental unit, allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee for this application from the Landlord.

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.

Issue(s) to be Decided

1. Has a 1 Month Notice to End Tenancy for Cause been issued and served upon the Tenant in accordance with sections 51 and 47 of the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to uphold the 1 Month Notice?

3. Did the Landlord make an oral request for an Order of Possession during the hearing?
4. Has the Landlord breached the *Residential Tenancy Act*, regulation, and or tenancy agreement?
5. If so, has the Tenant met the burden of proof to obtain orders pursuant to sections 32, 62, 65, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a month to month tenancy that began on April 1, 2000. The current subsidized rent is payable on the first of each month in the amount of $548.00.

The Landlord's witnesses provided oral submissions and answers to the Tenant's direct questions as summarized below.

Witness 1 – affirmed he has held a plumbing license for the past four years. He inspected the rental unit on June 8, 2011 at which time he found alterations to the plumbing that do not meet B.C. Plumbing Code. He was prepared to provide each section of the code that has been breached however in the interest of time I requested that he provide me with a summary of his concerns. His concerns included, but were not limited to, the following: there was no permit issued to conduct the work; the plumbing work has not been done to code; there is no double check valve on the water distilling system which could cause contamination to the water in the building and the municipality.

Witness 2 – affirmed he has held an electrical license for over twenty five years. He inspected the rental unit on June 8, 2011 at which time he witnessed several extension cords layered or criss-crossed on the floor, a cord plugged in by the refrigerator to a compressor which was over 20 ft in length, saw a dryer on the balcony with an extension cord of over 25 feet; a washing machine inside the unit; and 120 volt wires or cords along the wall. The main concern was with the extension cords that were longer than six feet in length which are obviously being used for appliances which is against the electrical code. He stated the dryer is drawing 30 amps and with an extension cord that is approximately 25 feet in length, it would most certainly over heat during use and be considered a fire hazard. He stated that during his inspection most of these cords were unplugged and he was surprised that the circuit breakers were not being blown with so many cords. In closing Witness 2 stated that this suite poses a fire hazard and that if the electrical inspector saw the condition of it with all the wires and extension cords strewn around this suite, he would shut the unit down.

Both parties presented written and oral submissions which I summarize below.

Landlord's submission

The Landlord affirmed they have been dealing with the Tenant for a period of several months concerning his videotaping other tenants, alterations that have been made to the unit's plumbing and electrical system, without written permission, and his refusal to allow the Landlord access to the unit for inspections.

The Landlord referenced a previous dispute resolution decision from March 2011 which ordered the Tenant to remove the video camera and argued the Tenant has failed to comply with the order to remove the camera as he has simply removed it from the exterior of the door and placed it on the inside of the door. She referenced warning or breach letters that were served to the Tenant May 3, 2010 and May 18, 2011 as provided in their evidence.

The Tenant previously altered the electrical panel when he installed a subpanel and used larger breakers without the Landlord's permission. This was finally removed and the Landlord installed a different type of breaker box that would prevent the Tenant from increasing breakers. He also changed the plumbing under the sink, as supported by their witness statements which was not done to code and was not done with proper permits. They have attempted to have him return the plumbing back to its original stated and the Tenant refuses to do so.

The Landlord advised they re-initiated the process of having the unit returned to its original state by inspecting the unit on June 8, 2011. Then, after a period of staff vacations and illnesses they began to re-work this file at the beginning of November when they attempted to gain entry to determine if the Tenant had returned the plumbing back to its original state and had removed the hazardous extension cords and wiring.

The Landlord stated they had communicated with the Tenant of their intent to inspect his unit and gave him the option to choose either November 21st or November 22, 2011 for the inspection however the Tenant did not respond. A notice of inspection was posted to the Tenant's door on November 25, 2011 for access on December 1, 2011. When they attended the unit the Tenant refused them access. A second notice of inspection was posted December 2, 2011 for access to the unit December 8, 2011. When they attended December 8, 2011 the Tenant refused access a second time.

The Landlord confirmed that what they had been seeking all along is for the Tenant to have the unit's plumbing changed back to its original state and property use of electricity

in accordance with electrical code; to allow the Landlord monthly inspections to ensure compliance with safety and the tenancy agreement; and removal of the camera so it does not tape tenants in the hallway in accordance with the March 2011 decision.

Tenant's submission:

The Tenant affirmed that as of December 12, 2011 he has returned the plumbing back to its original state, except for the water distilling system, he has not changed that. He confirmed he did the work himself and that he is not a licensed plumber. He pointed out that he would have had to been allowed access to the locked room which houses the water shut off valves in order to do this work in the first place and contends that he had permission from the Landlord and that the Landlord's plumber inspected the work when it was first completed and could not find anything wrong with it.

The Tenant is of the opinion that his system of extension cord usage throughout his apartment does not pose a health or safety risk as he pointed out how the extension cords were not all plugged in at the time of the inspection. Furthermore the length of the extension cord is not at issue with safety regulations; rather they are only considered dangerous if they are under rated.

The Tenant is of the opinion the March 2011 decision only ordered him to remove the camera from the exterior of the door and for the door to be returned to its original condition. He feels he has complied with the order by moving the camera to the inside of his unit. He does not believe the Landlord has the right to prevent him from videoing the hallways as he does this for his own safety and the Landlord themselves have numerous cameras taping throughout the building. He stated he does not trust the Landlord and he is within his right to operate a video camera from within his apartment. He advised how he was granted possession of the unit in a previous hearing because the Landlord had entered his suite numerous times in breach of the Act and at that time he was granted permission to change the lock on his door so now the Landlord cannot access his unit without his permission. He questioned why the building manager continues to attend his unit when he has had so many problems with him in the past.

The Tenant confirmed he has refused the Landlord access for inspections. He noted that in previous months the Landlord advised they will show up and then they do not. Then on September 8, 2011 he informed a temporary manager that his smoke detector was not working and nothing was done about that until December 9, 2011 when it was finally repaired. He confirmed he denied the Landlord access on May 13, 2011 because they showed up with eight people to inspect his unit which is way too many. After calling the police the Landlord agreed to bring in only one person at a time with her

for the inspection. He confirmed denying the Landlord access on December 1, 2011 and December 8, 2011 because he felt there was nothing new to inspect as he had not made any changes to the unit at that time because he had not been given access to the locked room where the water shut off valves are located. He states he noticed the water shut off room had been left unlocked one evening so he decided to change the plumbing that evening December 12, 2011. He did not feel the need to inform the Landlord the work had been completed.

The Tenant went on to advise about the continual problem with bed bugs. He stated that he uses his steamer to treat the bed bugs in a healthier manner so he does not have to remove his birds during pesticide treatments. The Tenant acknowledged that he has seen the presence of bedbugs in his apartment currently, crawling on his papers and other areas in his rental unit.

Landlord's closing remarks:

In closing the Landlord noted the following: they do have cameras throughout the building but not in the hallways so the Tenant's privacy can be respected when entering their unit; they take issue that the Tenant did not use a licensed plumber to return the plumbing back to its original condition and they are concerned that it is still not done to code; the Tenant confirmed he has not changed back all the plumbing so it is still a health concern without the back flow valve so he is still putting the entire water supply at risk; the Landlord had no previous complaints about the smoke detector being broken and when they did find out they had it repaired as soon as possible; the Landlord has offered the Tenant the fire warning strobe system that is designed for hearing impaired however he refused their offer to install it; the Landlord confirmed they had left the water valve room unlocked after hours because the Tenant specifically requested it to have the repairs completed; there has never been an order for the building manager not to attend the rental unit; and they have not had a recent complaint from the Tenant about the presence of bed bugs in his unit.

The Landlord advised they would like the Tenant to move out as per the 1 Month Notice as he is not in good standing and is not complying with their requests. The Landlord verbally requested an Order of Possession effective January 31, 2012,

Tenant's closing remarks:

The Tenant disputes the Landlord's request to change his peephole view in his door, to restrict his use of the video camera, as there are 51 other suites in this building with larger or oversized peepholes. He confirmed he has not complained about bed bugs for

years because he manages their presence with his steamer. He states he was told they would install the safety device for his fire alarm however they have failed to do it.

Analysis

I have carefully considered the aforementioned and the documentary evidence submitted by both parties which included, among other things, a copy of the 1 Month Notice to End Tenancy for Cause, written communication from the plumber and electrician listing their safety concerns about the Tenant's rental unit; a copy of the March 2011 dispute resolution decision; copies of breach letters to the Tenant, photographs of the rental unit; and various other e-mails and communications between the parties

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 29(2) of the Act stipulates that a landlord may inspection a rental unit monthly after providing proper written notice in accordance with section 29(1)(b).

The Tenant's tenancy agreement includes the following terms:

> *#23 (c) Tenants must obtain the prior written consent of the landlord to make any structural alterations to the residential premises or the residential property*
> *#23(d) Tenants must obtain the prior written consent of the landlord to install or store heavy appliances or equipment in the residential premises or on the residential property*
> *#24 The Tenant must take all steps necessary to prevent the creation of a hazard and must immediately rectify any hazards created by an occupant or guest of the tenant*

Section 47(1)(g) of the Act provides that a landlord may end a tenancy by giving notice if the tenant does not repair damage to the rental unit or other residential property, as required for health and sanitary standards, within a reasonable time.

The Landlord relies on the following reasons under section 47 (1) of the Act for issuing notice to end this tenancy:

> ***The tenant or a person permitted on the property by the tenant has:***

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Upon consideration of all the evidence presented to me, I find the Tenant provided insufficient evidence to prove his current manner of using electricity inside his apartment, which included use of a handmade extension cord to access 220 Volt power behind the oven for his dryer, does not pose a health and safety risk. I further find that the Tenant has provided insufficient evidence to prove the plumbing work he had previously completed and now recently changed meets health and safety standards. Rather I accept the evidence provided by the licensed electrician and plumber who both stated the rental unit does not meet health or safety code or standards.

I considered the Tenant's evidence that this issue has been ongoing for several years and that at some point the Landlord would have had to allow the Tenant access to the locked room that housed the water valves in order for this work to have been completed in the first place. There is insufficient evidence to support how access was obtained or if in fact the work was ever approved by the Landlord or their plumber. That being said I still find the Tenant breached sections 23 and 24 of the tenancy agreement and when it was brought to his attention along with the health and safety concerns, he continued to refuse to correct the matter within a reasonable time after written notices and breach letters were issued to him.

The evidence further supports the Tenant breached section 29(2) of the Act by not allowing the Landlord access to the unit to conduct inspections. I note that there is no provision in the Act that provides the Tenant the authority to deny access for an inspection because the Tenant has determined an inspection is not required or worthwhile; rather the Landlord is entitled to conduct monthly inspections as the Landlord determines necessary.

As per the aforementioned and based on the accumulation of events over a period of several months, I find the Landlord had valid reasons for issuing the Notice. Therefore I dismiss the Tenant's application to obtain an order to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective January 31, 2012 at 1:00 p.m.

In response to the Tenant's application to seek Orders to have the Landlord comply with the Act, regulation or tenancy agreement, to have the Landlord make repairs to the unit, site or property, provide services or facilities required by law, suspend or set conditions on the Landlord's right to enter the rental unit, allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, I find there to be insufficient evidence to warrant the issuing of any of the requested orders. Accordingly the Tenant's application is dismissed in its entirety.

The Tenant has not been successful with his application and therefore he must bear the burden of the cost for filing this application.

Conclusion

The Landlord's application will be accompanied by an Order of Possession effective **January 31, 2012 at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

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 16, 2011.

Residential Tenancy Branch