



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, LAT, FF

Introduction

This was a cross-application hearing.

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, an Order the tenant be allowed to change the locks to the unit and to recover the filing fee costs.

The landlord applied requesting an Order of possession based upon a 1 Month Notice to End Tenancy for Cause and to recover the filing fee costs.

Each party confirmed receipt of the applications and Notices of hearing; the tenant's package was received in early October; the landlord's package and evidence was received prior to the end of October, 2012.

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. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided

Preliminary Matters

The tenant confirmed that his evidence was served to the landlord by posting to the landlord's door on November 5, 2012. The tenant submitted the application on October 9, 2012. The landlord stated she had seen the evidence but had not been given adequate time to submit a response.

As the tenant did not serve the landlord with his evidence at least 5 days prior to the hearing, as required by the Rules of Procedure, the evidence submission was set aside. The tenant was at liberty to make oral submissions in relation to all documents contained in his written submission.

An anonymous written statement submitted by the landlord was set aside, as anonymous submissions fail to allow the tenant an opportunity to properly respond.

The male tenant submitted the application, as the sole applicant. The tenant's application provided the landlord name, as indicated on the tenancy agreement and the Notice to end tenancy; however, the tenant also included a female first name on the application. The application has been amended to reflect the landlord name, as provided on the Notice to End Tenancy and the tenancy agreement.

The landlord named the tenant and a female as respondents. The female was present at the hearing. A copy of the tenancy agreement was supplied as evidence. The original agreement was signed by the male tenant on June 30, 2012. The tenancy agreement was amended on September 15, 2012, adding the female respondent as a temporary occupant.

Residential Tenancy Branch policy defines an occupant as:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

Therefore, as the tenancy agreement indicates that the female respondent is an occupant I have amended the landlord's application, removing the female occupant as a respondent.

The tenant indicated several matters of dispute on his application and confirmed that the main issue to deal with during this proceeding was the Notice to End Tenancy. For disputes to be combined on an application they must be related. I determined that not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the Notice to End Tenancy for Cause and I dismissed the balance of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on September 27, 2012 be cancelled?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2012, rent is due by the first day of each month.

The tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause that was issued on September 27, 2012; the Notice had an effective date of October 31, 2012.

The Notice was placed in the tenant's mail slot on September 27, 2012. The tenant applied to cancel the Notice on October 9, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord testified that the 35 unit building is heated by a hot water radiant system. From the start of the tenancy the tenant has complained about a lack of heat, even during the summer months when temperatures were at record high levels. The landlord has taken steps to address the tenant's concern and on September 24, 2012 a plumber was hired to investigate.

A copy of a plumbing invoice for the unit was supplied as evidence. The invoice indicated that some maintenance was completed and that the heat was working.

The landlord said that the tenant's occupant had given them permission to enter the unit on September 24, 2012; the tenant denied that permission for entry was given.

In the evening of September 24, 2012 it was not disputed that the tenant telephoned the landlord to enquire about the plumbing repair. The landlord was eating dinner and told the tenant she would call him back; the tenant alleged the landlord hung up on him; but agreed that within a short period of time the landlord did call back.

The landlord said that the tenant was upset as he believed a part for the heating system needed to be replaced; the landlord told the tenant that the plumber had determined that the heat was functioning and that parts were not required. The landlord said that despite her attempts to explain the situation to the tenant, he kept screaming at her, so she hung up the phone.

Within a minute of hanging up, the tenant was at the landlord's door, banging on the glass of the front door to her unit. The landlord's spouse answered the door before the landlord could stop him. The landlord's spouse testified that the tenant did not knock on the door, but was banging on the door.

When the landlord's spouse opened the door he asked the tenant what he wanted. The tenant responded "my heat." The tenant then alleged someone had gone into his suite and stolen \$100.00. The landlord then came to the door; however, she did not want to speak with the tenant.

The landlord described an altercation that occurred at the door, after she arrived. The landlord said the tenant was screaming at her husband, and when she arrived he

continued to scream and demand the telephone number of the owner of the property or the strata contact. The landlord stepped between the tenant and her husband as she was concerned about her husband as he had had heart surgery within the past year and she was afraid the stress would cause a heart attack.

The landlord told the tenant that the plumbing was fine; that the plumber had gone to the unit and that if the tenant had additional concerns he should put those concerns in writing. The tenant responded that the landlord would just throw the note out. The landlord went to close the exterior screen door but the tenant grabbed the door with his right hand, so the landlord could not get the door closed. The tenant then crouched down, holding onto the door while screaming "like a lunatic."

The landlord did not know what was going to happen, she was stunned by the tenant's behaviour and continued to try to close the door. Every time the landlord attempted to close the door the tenant would pull harder. At one point the tenant pulled so hard on the door that he managed to pull the landlord out of the door and into the hallway. The landlord believed she would be assaulted and was in such a state of shock did not realize she could just step backward into the unit. The landlord's husband said that he pulled his spouse back into the unit.

At this point the landlord could hear the tenant pacing in the hallway, while the tenant called the police. The landlord also called the police, who arrived within minutes with an emergency response team. The police told the landlord they would not proceed with a complaint made by the tenant who alleged robbery. When the landlord called the police they were told that several calls had already been made and that the landlord should remain in the unit and the door was closed.

The landlord supplied a statement signed by an occupant of another unit. This occupant indicated that on the night in question she heard screaming outside of her door; that a tenant was screaming at the landlord. She could hear a male voice yelling that he wanted a number and saying that he could scream too. She could hear the landlord screaming, telling the tenant to get out of her house, that she had told him what to do. The witness statement indicated that she heard the landlord tell someone to let go of her; after which she heard the male say \$100.00 was missing from his suite. She heard the male say he would call the police; the landlord's door close, and then the male telling the police he had been robbed. The occupant indicated she did not hear all of the details of the altercation.

The landlord's spouse provided a written statement outlining the events, as he saw them. The tenant yelled at him, asking for a telephone number and accused him of entering the rental unit without permission. His wife told the tenant to leave, but the tenant was screaming "at the top of his lungs." The tenant ended up "reefing" the door open while the landlord was attempting to close the door, which resulted in the landlord being pulled into the hallway; he believes his wife went into shock. The tenant then remained in the hallway while he was calling the police.

The landlord provided a copy of a medical record issued by her physician on October 2, 2012, indicating she had to be absent from work due to treatment for injuries. When the tenant jerked on the door, causing the landlord to be pulled into the hallway, this caused her to reinjure an arm that had to be reconstructed as a result of a burn. The tenant said her doctor believed she had suffered whiplash.

The landlord referred to a previous incident that occurred earlier in the tenancy, when the tenant had run an electrical cord out the lobby door so that he could use power tools on the lawn. The landlord said the tenant ignored her direction to cease so she went into the lobby, unplugged the extension cord and closed the door. The landlord said all tenants understand they must never leave the front door to the building open.

The tenant responded that on September 24, 2012 he came home to find that the landlord and plumber had entered his unit without permission. He then called the landlord to ask if a stem valve had been replaced in the heating system. The landlord kept saying the heat had been repaired, would not listen as she was eating and then hung up on him. The landlord did return his call and was abrupt with the tenant, so he told her not to be snippy with him. The landlord then hung up the telephone, so the tenant went downstairs to the landlord's door.

The tenant said he knocked on the door; that no one answered so he opened the screen door and knocked with his open palm. The landlord's spouse came to the door and he seemed angry, so the tenant attempted to calm him down and then asked to speak with the landlord. When the landlord came to the door he told her he wanted to discuss illegal entry to his suite; that the illegal entry was serious and that \$20.00 was missing from his unit.

The landlord came rushing out of the unit and came within inches of the tenant's face; the tenant alleged the landlord had behaved in the same manner when he was using the power tools on the front lawn.

The tenant said that the landlord was yelling, so he then began to yell "incoherently." The tenant said he would not listen to the landlord and she would not listen to him and that the landlord attempted to "bump" him out of the doorway. The tenant agreed he did scream at the landlord, something he described as amusing. When asked why he found the encounter amusing the tenant responded that it was most important to consider that it was not so much amusing, but that he wanted to show the landlord that yelling is not a way to solve problems.

The landlord then grabbed the screen door closer and pulled herself into the tenant; at which point the tenant told the landlord not to touch him, and he backed up. The tenant, when asked why he did not step back out of the doorway and close the door; replied that he wanted to speak to someone above the landlord, such as the owner.

The landlord told the tenant they would call the police; the tenant dialed 911, resulting in the high level of response by the police. When asked, the tenant said he called the police to report illegal entry and trespass.

In response to the written witness statement, the tenant agreed he would have been heard asking for the telephone number and that he was told to get out the landlord's house, but that was unnecessary as he was not inside the home, only at the door.

The tenant explained that the landlord has a history of inappropriate behaviour and that she can be somewhat volatile herself.

At the start of the hearing the tenant indicated that the female occupant was present but that she was not participating in the hearing. Toward the conclusion of the hearing the female asked to participate and she was affirmed. She wanted to understand why the application had been severed to exclude their request to change the locks to the unit. I explained that the reason had been provided at the start of the hearing and that reason would be contained in this decision. I also explained section 29 of the Act to the parties; a copy of which is appended after the conclusion of this decision.

Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on September 27, 2012.

I find that the tenant received the Notice on the 3rd day after it was placed in mail slot; September 30, 2012. Therefore, the effective date of the Notice was October 31, 2012.

The tenant applied to cancel the Notice within the required time-frame.

In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant did significantly interfere with or unreasonably disturb the landlord. In consideration of this reason given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the term upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:

"To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others."

I find, on the balance of probabilities that the tenant chose to attend at the landlord's unit to further engage in a discussion the landlord had clearly ended when she hung up the telephone. Whether the landlord acted appropriately or not; my focus is on how the tenant then chose to deal with the situation.

The tenant denied that he banged on the landlord's door; yet he said that he knocked on the door using his open palm; I find that the use of an open palm would be more consistent with banging on the door.

The tenant confirmed that he repeatedly requested a telephone number from the landlord, who was screaming at him. I accept that the landlord screamed; what is of concern is that the tenant chose to remain in the landlord's doorway; that he chose to scream at her, rather than accept the landlord's request he place concerns in writing.

The tenant's justification for remaining in the doorway and yelling at the landlord is that he found her behaviour "amusing" and that by engaging in a screaming match with the landlord he would teach the landlord that yelling does not solve problems.

In the circumstances before me, I find the version of events provided by the landlord and her spouse to be highly probable given the conditions that existed at the time. Considered in its totality, I favoured the evidence of the landlord over the tenant.

I found the tenant's reasoning for remaining at the doorway inexplicable and that by choosing to remain and scream at the landlord, so that he could obtain a telephone number, caused an unreasonable disturbance to the landlord. The landlord was frightened by the tenant's behaviour, which she found to be aggressive and unnecessary and I would agree, given the tenant had a choice to leave the area, but chose not to, that he was the aggressor.

The parties provided disputed testimony in relation to the landlord's attempts to close the door and I find, based on the testimony and the balance of probabilities that the landlord was attempting to close the door and was thwarted by the tenant.

During this exchange the tenant had the choice to remove himself, to put his concerns in writing and, if unsatisfied, to submit an application for dispute resolution. I have rejected the tenant's suggestion that he was somehow engaging in conflict resolution or problem-solving by screaming at the landlord; which was amusing to him. I have determined that the tenant's behaviour was unreasonable, that it caused a disturbance to the landlord and that the first reason on the Notice to end tenancy is supported.

Therefore, I find that the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause issued on September 27, 2012 is dismissed; the Notice is of full force and effect.

The landlord has requested an Order of possession. .

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord was at liberty to request an Order of possession based on the tenant's application, I decline filing fee costs to the landlord.

While the tenant was given leave to reapply requesting an Order the allowing him to change the locks to the unit; the tenancy has now ended.

Conclusion

The tenant's application to cancel a 1 Month notice to End Tenancy for Cause is dismissed.

The tenant has leave to reapply in relation to the balance of the application; however, the tenancy is ending.

The landlord has been issued an Order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 09, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

- 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).