



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, OLC, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause. The tenant was also seeking a monetary order in damages, an order to force the landlord to comply with the Act and do repairs. Both the landlord and the tenant appeared at the hearing and each gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Should the One-Month Notice to End Tenancy for Cause be cancelled as requested by the tenant?
- Should the landlord be ordered to do repairs?
- Should the landlord be ordered to comply with the Act?
- Is the tenant entitled to monetary compensation for damages and loss?

The burden of proof is on the landlord/respondent to justify that the Notice to End Tenancy is valid. The burden of proof is on the tenant for the remainder of the claims in the application.

Background and Evidence End of Tenancy

The tenancy began in August 1999 and the rent is \$1,389.00. A security deposit of \$575.00 was paid. The landlord testified that a One-Month Notice to End Tenancy for Cause was served on October 31, 2012. A copy of the Notice was in evidence and indicated that the tenancy was being ended because the tenant engaged in an illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The tenant testified that she is seeking to cancel a One-Month Notice to End Tenancy for Cause because she believes there is no basis to support the landlord's allegation that she had ever jeopardized a lawful right or interest of the landlord.

The landlord testified that the tenant has been relentlessly harassing the landlord both physically and by email. The landlord stated that, on October 17, 2012, they received 20 emails from the tenant about a problem with her doors. The landlord testified that their contractor found out that the doors had been damaged by the tenant. The landlord testified that the doors were repaired on October 19, 2012 by a professional, and are now fully functional.

The tenant testified that she did send email but it was "back and forth" and was not harassing in nature. The tenant denied that they had damaged the doors and pointed out that the doors were useless and warped. The tenant stated that they are not repairable and must be replaced.

The landlord testified that their efforts to gain access have been impeded by noncooperation of the tenant and this jeopardized their efforts to complete necessary repairs within the deadline ordered in a previous hearing.

The landlord pointed out that the tenant had repeatedly refused access, even when the landlord had provided 24 hour written notice, and often demanded that the landlord and contractors come on a different date of her choosing. The landlord testified that, on one occasion, on November 19, 2012, both their electrical contractor and the BC Hydro technician were accused by the tenant of arriving too early and were refused access by the tenant who told them to come back later.

The tenant testified that the landlord was intrusive and she did not always agree with the schedules they offered. The tenant stated that the landlord often neglected to give proper notification for access. The tenant explained that she is very busy and is not always available when the landlord does request access at a particular time. The tenant admitted that she did send the electrical contractor and the BC Hydro technician away on November 19, 2012, but felt this was justified because they arrived an hour too early.

The landlord testified that the tenant has also engaged in harassing conduct against the trades-persons while they were trying to do repair work on the unit. The landlord testified that written complaints were received from the various workers and some have even refused to return to the rental unit with the tenant present. The landlord submitted copies of communications from their contractor as evidence.

The tenant disputed that she had ever harassed any contractors, but stated that she did have normal conversations with the workers and remained friendly throughout their attendance in her home. The tenant admitted that she did ask some of the tradesmen about doing other repairs than those they were contracted to do.

One contractor stated in writing that he took exception to the tenant falsely accusing him of illegally entering the unit and pointed out that he was having dental surgery on the date that this allegedly occurred. The contractor provided proof of this medical procedure which is in evidence.

With respect to the written complaint, the tenant pointed out that this particular contractor was a friend of the landlord and she was still convinced that he had illegally entered her home without permission and removed the weather stripping on her door.

The landlord testified that the tenant made another false accusation that contractors who came to service the oil burner had soiled some carpeting stored in the garage and demanded \$200.00 from the landlord. The landlord testified that they investigated and found out that none of the carpeting was soiled.

The tenant disputed the above testimony and categorized it as "more lies".

The landlord stated that the tenant refuses to permit the landlord to do any further repairs and submitted a copy of an email from the tenant dated November 13, 2012 stating:

"no work will be taking place on the house other than an inspection....i can have an inspection done of my own accord"

The landlord stated that they are concerned that the tenant will jeopardize the safety of the home by engaging unqualified personnel who have no expertise or credentials particularly if they disturb existing asbestos materials that may be in inaccessible areas of the home.

The tenant testified that she is well within her right to have the house inspected for asbestos and the landlord has no authority to prevent this from being pursued as she sees fit to do.

The landlord described a disturbing incident that occurred on October 16, 2012, in which the tenant suddenly appeared at the landlord's home in a rage and proceeded to block their exit with her car and tried to physically accost them as they sat in their vehicle. The landlord testified that this threatening conduct was witnessed by bystanders and provided a letter in evidence from a neighbour who described the incident. The letter stated that the tenant blocked the landlord's car from leaving with her own vehicle and approached the landlord's vehicle while yelling and gesturing in an angry state.

The tenant acknowledged that she did come to the landlord's home on October 16, 2012, to straighten out a financial issue, but denied that she acted in a threatening manner or prevented the landlord from leaving.

The landlord stated that, whenever they try to access the rental unit or communicate directly with the tenant, the tenant explodes in a tirade of verbal abuse and aggressive conduct.

An incident where this occurred in front of a third party was on October 19, 2012. It was witnessed by the landlord's contractor who submitted written testimony describing the tenant's actions as screaming directly into the landlords face at close proximity. The contractor stated that the tenant then proceeded to confront him by hollering at him while wagging her finger in his face and making wild accusations against him.

The tenant testified that it is the landlord who acts in an overtly hostile manner toward her and that she has been subjected to bullying by the landlord. The tenant testified that she did not verbally abuse the landlord or the contractors at any time.

The landlord submitted a doctor's note that states that the landlord's health has been put at risk by stress and anxiety related to the tenant's behaviour.

The landlord testified that the tenant has also attended at their home and dumped off unwanted material, that she had bought demanding that she be paid for it. This consisted of two rolls of foam. The landlord testified that the tenant produced two fraudulent receipts that she misrepresented as being from service professionals who she alleged did work on the flooring and cleaned the carpet.

The tenant stated that she incurred the costs and was merely trying to give the landlord an opportunity to repay her to avoid making a claim through dispute resolution. The tenant testified that she did not represent the two receipts as being from service professionals and presented them as estimates to verify her genuine costs.

The tenant's witness appeared to give testimony, but admitted that she was never present during any of the dates or incidents under dispute. The witness stated that she is fully aware of what has been going on because the tenant told her all about what has been happening. The witness stated that she was ready to testify that the tenant was been poorly treated by the landlord and that this was unfair.

The landlord feels justified in requesting an end to this tenancy based on the One-Month Notice to End Tenancy for Cause. The tenant's position is that the landlord has concocted lies about her conduct to get rid of her and that issuing the Notice was never justified.

Background and Evidence Repairs and Monetary claim

The tenant stated that she was seeking an order to force the landlord to do additional repairs on the rental unit.

A previous hearing was held on October 4, 2012 on the tenant's application for monetary compensation. The tenant's monetary claims were dismissed, but the adjudicator ordered the landlord to do some specific repairs. According to the landlord these repairs were all completed, despite the tenant's efforts to delay the work by limiting access and bothering the contractors while they were trying to work on the site.

The tenant testified that the repairs the landlord had completed on the doors were not adequate and she believes that new doors are the only solution. The tenant is making a claim of \$350.00 for the doors.

The tenant's application states that she is also seeking repairs to the electrical outlets. In addition to the above, the tenant had requested monetary compensation in the amount of \$150.00 for "*3 nights of moving furniture*" and \$40.00 for "*Receipt for covering for the kitchen floor before new one put down*". In support of the above claims, the tenant provided a handwritten, unsigned receipt for \$150.00 dated November 12, 2012 and a handwritten unsigned receipt for one hundred dollars dated November 24, 2012. When questioned about irregularities in these receipts, the tenant testified that she had written the receipts herself and that they were only "estimates".

The landlord testified that the tenant's monetary claims had absolutely no basis. The landlord stated that the doors do not need to be replaced as they have been repaired and function fine. The landlord stated that there is no emergency situation in regard to the doors and, in any case, the tenant has not expended \$350.00.

In regard to the other two claims for compensation in the amount of \$150.00 and \$40.00, the landlord took issue with the tenant's fraudulent receipts and stated that the furniture moving claim was baseless and unproven and the other claim for the covering of the kitchen floor had nothing to do with the landlord's responsibilities under the Act. The landlord testified that the kitchen floor was duly inspected as ordered and found to be adequate, but despite that fact, was replaced.

Analysis Notice to End Tenancy

I find that section 47, permits a landlord to give Notice to end a tenancy for cause and requires a One-Month Notice completed on the proper form with an effective date that is not earlier than one month after the date the landlord issues the notice; and is also the day before the day in the month, that rent is due under the tenancy agreement.

Although the tenant testified that she went to the landlord's home on October 16, 2012 to merely to discuss a tenancy matter with the landlord, I accept the landlord's and the witness's testimony about what transpired. I find that, the tenant took it upon herself to forcefully confront the landlords against their will at their place of residence. I find that the tenant restricted their departure with intent to do so, despite the fact that she was clearly aware they wanted to leave her proximity at that time. I find that the tenant persisted in acting in an overtly hostile and threatening manner even after the landlord told the tenant to remove herself from their property. I find that this alarming conduct was witnessed by others, who also observed that the landlord seemed to be quite traumatized by the tenant's evident loss of control.

I find that similar intimidating and, perceived as threatening, behaviour was perpetrated by the tenant towards the landlord and a contractor on October 19, 2012 when the landlord and tradesperson attended the rental unit after giving proper written Notice 24 hours in advance as required under the Act.

I note that that the landlord has been under a physician's care for stress that the doctor attributed in his report dated November 27, 2012, to being caused by the landlord's interactions with this tenant.

I also find, on a balance of probabilities, that the tenant has wilfully interfered with, and jeopardized the landlord's legal right to access the rental unit to complete necessary repairs, by accosting, accusing and generally bothering the landlord's professional trades persons while they were trying to do their jobs.

Based on the evidence and the testimony, I find on a balance of probabilities that the tenant did engage in the conduct being alleged and that this would justify an end to the tenancy for cause. Accordingly, I find that the One-Month Notice to End Tenancy for Cause is valid and enforceable and will not be cancelled.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Order of Possession is effective on December 31, 2012. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Analysis Repairs and Claims Compensation

With respect to the tenant's request for orders to force the landlord to do repairs, I find that no orders are necessary as I am satisfied that the landlord has completed the

necessary repairs to date and will continue to address deficiencies in the rental unit. I accept the landlord's and contractor's assessment that that the doors are functional.

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that reasonable steps were taken to mitigate or minimize the loss or damage in compliance with section 7(2) of the Act.

I find that the tenant's claim for compensation for the cost of doors has not sufficiently met the test for damages to establish that she is validly entitled to monetary compensation of \$350.00 for expenditures and this portion of the tenant's monetary claim is dismissed.

With respect to the tenant's claims for the cost of moving furniture and purchasing foam to cover the kitchen floor, I find that these monetary claims fail to meet any of the elements of the test for damages and are therefore not sufficiently proven.

Therefore I find that the tenant has not sufficiently met the burden of proof to justify any of the monetary claims cited in her application and they must be dismissed.

Conclusion

The tenant's request to cancel the One-Month Notice to End Tenancy for Cause is dismissed and the landlord has been granted an Order of Possession based on the Notice.

The remainder of the tenant's application for orders and monetary compensation, including the reimbursement of the cost of the application is hereby dismissed without leave to reapply.

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 10, 2012.

Residential Tenancy Branch