



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC LRE LAT RR

Introduction

This proceeding convened on January 8, 2013, for sixty minutes and reconvened for the present session on February 12, 2013 for forty minutes. This decision should be read in conjunction with my interim decision of January 18, 2013, which was amended on February 13, 2013.

During the course of the January 8, 2013 hearing the Landlord was issued the following orders:

The Landlord is ordered to have the natural gas heat turned back on no later than close of business on January 8, 2013. The Landlord is further ordered to ensure that all common areas and the Tenants bedroom have adequate heat which complies with health and safety standards, pursuant to section 32 of the Act.

The Tenant was ordered to cease all payments of rent until this hearing is reconvened to review evidence submitted by the Landlord which proves the heat has been turned back on and until a decision is rendered which confirms they have complied with this order.

The parties were advised that when this hearing reconvened on February 12, 2013, we will only be discussing the above mentioned order, and the Tenant's request to change the locks.

Issue(s) to be Decided

1. Has the natural gas heat been turned back on?
2. If so, should the Tenant be ordered to resume rental payments?
3. Should the Landlord be ordered to change the rental unit locks?

Background and Evidence

The Landlord's Agent submitted late evidence which included a copy of a natural gas bill for the rental unit. He stated that he sent the Tenant a copy of this bill through Canada Post. The Tenant advised that she had not received the Landlord's evidence and therefore has not seen the natural gas bill.

The Landlord's Agent affirmed that he contacted the owners immediately following the hearing and that the owners e-mailed him a natural gas bill which proved the natural gas was not turned off. He confirmed that he made no effort to attend the rental unit to ensure the heat was turned on as I ordered him to do so. He claimed the owners and their son were out of the country and later confirmed that he has a key to the rental unit and authority to act as agent for the Landlords. After further discussion the Agent stated that he attended the rental unit last week on February 5th or 6th and found the heat to be working.

When asked why he did not follow my orders the Agent claimed that he did not understand the orders. He also stated that neither he nor his legal counsel had seen a copy of my interim decision. I reminded the Agent that during our meeting on January 8, 2013, both he and the articling student, who were representing the Landlords, confirmed that they both understood my orders and they confirmed the address in which I was to send the interim decision.

The Tenant submitted that the owners and their son could not have been out of the country because after she mailed them her January 2013 rent cheque they returned it to her in the mail. She confirmed that January 2013 rent has been paid in full but that she did not pay anything for February 2013 rent as per my Orders.

The Tenant stated that when no one attended the unit to check the heat she called the natural gas company and asked if the hot water tank was heated by natural gas. She said they could not confirm if it was or not so she decided to take the cover plate off of the electronic thermostat that operated the furnace. When she removed the cover plate she found a corroded battery. After replacing the battery she said she played around with the thermostat until she could get the furnace going. She argued that the thermostat had to have been locked out at one point to turn down the heat.

The Tenant said the Landlord had been giving contractors keys to access the house unattended, which is why she wants the locks changed to prevent people other than the Landlords (owners, son, and Agent) from entering the house unannounced.

When discussing the Tenant's request to have the locks changed on the rental unit and her bedroom the Landlord stated the Tenant had previously installed a lock on the inside of the door which prevent them access to the common areas. The Tenant confirmed that she had installed this lock, without permission, and that she removed it once she received my interim decision.

In closing, the Tenant requested that I clarify the Landlords' authority to turn off common area lights. She confirmed that she leaves three lights on in the house, all night long as security, after she retires to her bedroom. She stated that the Landlords continue to turn those lights off. A discussion followed where I explained that it is reasonable to leave an exterior light on when she goes out for the evening, or to have interior lights on when she is awake and moving about the common areas of the house, but it would be

unreasonable to expect the Landlord to have to pay for electricity to leave lights on in the house after the Tenant has retired to her bedroom.

I informed the Landlord that under section 95 (3) of the Act, A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine.

I informed the parties of the amendments made to my January 18, 2013 decision. I reviewed the remaining items the Tenant had requested clarification on and she confirmed that her requests were answered.

Analysis

Upon review of the foregoing, I favoured the evidence of the Tenant over the Agent's evidence because the Tenant was forthright and credible when she confirmed that she had installed a lock on the interior of the rental unit to prevent outside access.

The Tenant readily acknowledged that she did not have permission to install that lock and that she removed it once she received my decision. In my view the Tenant's willingness to admit fault when she could easily have denied installing a lock lends credibility to all of her evidence. The Tenant's explanation that either the owners or their son were in town and returned her January 2013 rent cheque to be plausible given the circumstances presented to me during the hearing.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Agent's explanation of why he did not follow my Orders to ensure heat was restored to the house by the end of January 8, 2013, to be improbable. I make this finding in part because the Agent confirmed that he understood my orders and their articling student, who spoke English fluently, also confirmed she understood. Furthermore, I do not accept that the Agent did not see my interim decision or that the owners and their son were out of the country.

Rather, I find the Agent and Landlords knew the natural gas was never turned off and that they purposely ignored my Orders because they knew they had turned the heat

either off or down really low before locking the thermostat; as described by the Tenant in the May 24, 2012 hearing. The Landlords have attended this unit on numerous occasions since May 2012, and would have felt the cool temperatures, which are below normal requirements.

Furthermore, I do not accept the Agent's argument that they do not understand Orders or the *Residential Tenancy Act* because English is their second language. The Landlords have been represented at every proceeding by English speaking Agents, legal counsel, and an articling student. Also, the *Residential Tenancy Act* if available in various Asian languages such as Mandarin and Chinese.

Notwithstanding the Agent's failure to comply with my Order, the natural gas heat has been turned on for the entire rental house, by the Tenant. The Tenant was compensated by not having to pay rent for February 2012; therefore, I order that the Tenant resume rental payments effective March 1, 2013 in the amount of \$390.00. The Landlord is hereby Ordered not to turn the heat down below the required heating temperatures as stipulated under health and safety and/or building code requirements.

I reminded the Landlord that Section 95 of the Act stipulates that any person, who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

I find there is insufficient evidence to warrant ordering the Landlord to have the locks changed on the rental unit or on the Tenant's bedroom. Therefore, I dismiss the Tenant's request.

I remind the parties of my interim decision whereby I confirmed that only the Landlords (owners, their son, and their Agent) have full unobstructed access to the common areas of the property and that they must provide the Tenant with written notice of attendance by anyone other than the Landlords, in accordance with section 29 of the Act.

Conclusion

After considering the acrimonious nature of this tenancy relationship and the Landlords' continued breaches of the *Residential Tenancy Act*, I HEREBY ORDER the Landlords (owners, their son and their appointment Agents) to accompany any and all persons, (such as contractors) who attend the rental unit. The Landlords must not give anyone a key to the rental unit or allow unattended access to the common areas or the Tenant's bedroom. Written notice must be provided to the Tenant, in accordance with section 29 of the Act.

The Tenant is HEREBY ORDERED to resume rent payments effective March 1, 2013, in the amount of \$390.00 per month.

The Tenant's request to change the locks is HEREBY DISMISSED.

The Tenant's requests for clarification of the January 18, 2013 interim decision were discussed and finalized during the course of this proceeding.

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: February 13, 2013

Residential Tenancy Branch

