



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes OLC, RP, LRE, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply; to make repairs and to suspend or set limits on the landlord's right of access.

The hearing was conducted via teleconference and was attended by the tenant, her advocate and 4 agents for the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to an order to have the landlord complete repairs; to an order to suspend or set limits on the landlord's right to access the rental unit, pursuant to Sections 13, 29, 32, 44, and 70 of the *Act*.

Background and Evidence

The parties agree that while the tenant originally moved into the rental unit on April 15, 2011 the parties have entered into a number of short fixed term tenancy agreements. The parties both provided a copy of the most recent tenancy agreement signed by the parties on December 10, 2012 for a 1 month and 1 day fixed term tenancy beginning on January 1, 2013 for a monthly rent of \$375.00 due on the 1st of each month.

The tenancy agreement states, in Section 2 entitled "Length of Tenancy" the tenancy starts on January 1, 2013 for a fixed length of time: 1 months ending on February 1, 2013. At the end of this length of time the landlord may extend the tenancy for another fixed term length.

The tenant submits that there is nothing in the tenancy agreement that requires the tenant to vacate the rental unit at the end of the fixed term. The landlords submit that they provide rental accommodation as a part of government program of supportive housing that requires them to be able to establish fixed term tenancies and that they had developed their tenancy agreements with consultation with BC Housing.

Section 14 of the tenancy agreement outlines how a tenancy ends, specifically how a tenant would end a month to month tenancy; how the landlord might end the tenancy for reasons allowed under the *Act*; or by mutual agreement of the parties.

The tenant submits that the landlord has on some occasions entered her rental unit without prior notification or agreement from the tenant. The landlord submits that they have a written agreement with the tenant for weekly meetings with the tenant to provide support services.

The document the landlord provided as this agreement was dated May 1, 2012. The document, in the form of a letter from the landlord to the tenant, stipulates that two specific representatives of the landlord "will come to your apartment once a week to inspect the tidiness and organization of your apartment. We will always phone to let you know we are coming." The tenant has signed the document.

The landlord submits that these meetings are to provide the support services and to ensure the tenant's rental unit is not presenting a risk to the health and safety of the other occupants in the residential property.

The tenant submits that as late as last week the landlord's agent knocked on the door and before the tenant had a chance to answer the door the landlord was letting herself into the unit with the furnace serviceperson. The parties agree the furnace serviceperson was to attend the unit the week before but was unable to. The landlord testified that she provided an updated notice of the revised week for the furnace serviceperson visit.

The landlord's agent testified that if the landlord requires entry into the rental unit they provide the tenants in the residential property with written notice of their intent to enter by posting the notice on the tenant's door and then 48 hours later they will enter the unit, if they have not confirmed a visit with the tenant.

The tenant seeks repairs to a number of items. The tenant submits that she had informed the landlord months ago that her microwave was not working and nothing has been done. The landlord submits she had informed the tenant to keep notice of the problems and to let her know if the problems continue. The tenant testified that there was nothing to watch as her microwave was just not working, she thought the landlord was going to take care of the problem.

The tenant also submits she had informed the landlord of problems with her heating system previously; that some work had been completed; she continues to have heating problems which she has reported to the landlord but nothing has changed. The tenant testified that she has asked the landlord to replace light bulbs and to fix her entry buzzer.

The landlord testified that they had not received any complaints from the tenant regarding the heating; or light bulb replacement or buzzer until last week. In addition

the landlord testified that they cannot determine any problem with the heating system. She stated that when she checked the computer setting today the rental unit was set at 24°C and that if the tenant still felt cold she could increase the temperature setting.

Analysis

Section 13 of the *Act* stipulates the standard terms that must be included in a tenancy agreement. Section 13(2)(f)(iii) states that if the tenancy is a fixed term tenancy, the agreement must include the date the tenancy ends and whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date.

Section 44(1)(b) states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Upon review of the entire tenancy agreement submitted by both parties and based on the testimony of both parties I am satisfied that the tenancy agreement, while outlining a specific fixed term tenancy does not indicate that the tenant must vacate at the end of the tenancy. As such, I find the landlord cannot rely on the end date of the fixed term to end the tenancy.

Section 44(3) states that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

From the evidence before me and my finding above, I find that the parties have not entered into a new tenancy agreement and therefore, pursuant to Section 44(3) this tenancy is deemed to have been renewed as a month to month tenancy and if either party wishes to end the tenancy they must do so in accordance with Part 4, Division 1 of the *Act*.

Section 29 of the *Act* states 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 purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- 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.

While I accept that the landlord provides support services to tenants in this property and specifically to this tenant the testimony provided by the landlord that all of the entries to the rental unit are, at least in part, related to the landlord's obligations to other occupants in the residential property as such, I find all of these entries must comply with the requirements of Section 29 of the *Act*.

In relation to entering the rental unit for repairs or standard maintenance issues I find the landlord is providing written notice of their intent and while the *Act* only requires 24 hours notice the landlord provides 48 hours. However, Section 90 stipulates that when a document is served by posting it on the door of the rental unit it is deemed to be received 3 days after it is posted.

Therefore, unless the landlord can confirm that the tenant received the posted notice sooner than the 3 days deemed under Section 90, I order that the landlord must not enter the unit until the 3 days and the time period of the notice has passed. For example, if the landlord wants to enter the rental unit on February 15, 2013 at 1:00 p.m. with a 24 hour notice and they serve the notice to the tenant by posting it on the rental unit door they must serve the notice no later than February 11, 2013 at 1:00 p.m.

Further, in regard to the agreed upon weekly entry, to be compliant with Section 29 the tenant may grant permission but it must not be any later than 30 days prior to the entry. As such, I find the agreement signed by the tenant dated May 1, 2012 is no longer a valid agreement for the landlord to enter the unit.

In addition, Section 29 (2) stipulates that a landlord may inspect a rental unit monthly in accordance with Section 29(1). Therefore I order, should the landlord wish to do weekly inspections of the rental unit they may complete one inspection per month by giving their own notice as per Section 29(2)(b) and for the subsequent weeks they can obtain the tenant's permission, as long as that permission is provided by the tenant at the time of entry or not more than 30 days prior to entry.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In regard to the portion of the tenant's Application seeking repairs, I accept that despite the misunderstanding with regard to the microwave, the tenant has only recently submitted a request for repairs for the microwave, light bulbs, and entry buzzer. As such, I find it would be unreasonable at this time to provide any order for the landlord to make any repairs without the landlord having an opportunity to complete the repairs.

I note that should the landlord not investigate the repair requests and complete any necessary repairs within a reasonable time the tenant will remain at liberty to seek an order completion of these repairs and monetary compensation in a future Application.

In relation to the heat issue, I find the tenant has failed to provide any evidence of any problems related to the heating system and as the landlord has testified that the rental unit is registering with temperature of 24° I dismiss this portion of the tenant's Application.

Conclusion

For the reasons noted above I find the tenancy will remain in full force and effect. In addition, I order the landlord to comply with the requirements under the *Act* for entry to the rental unit as noted above.

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 06, 2013

Residential Tenancy Branch