



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA Kootenays
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, FF, ERP, LRE

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. The tenant filed an application seeking an order to set aside the One Month Notice to End Tenancy for Cause, an order to have the landlord conduct emergency repairs and an order to limit the landlords' right to enter the suite. Both parties participated in the conference call hearing.

Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on or about October 2006. In 2010 the tenant moved to the present unit. Rent in the amount of \$963.00 is payable in advance on the first day of each month. The tenant is responsible for \$475.00 and the remaining \$488.00 is subsidized by the government.

The landlord gave the following testimony:

On March 15, 2013 the landlord was conducting their annual unit inspections. The landlord was in a another unit when the subject tenant came in flustered and asked to have someone attend her unit right away as she believed she had found some mould. The landlord advised that the tenant would need to attend at the building office and fill out a form to request a maintenance person to attend. On March 19, 2013 the onsite maintenance person attended the unit to find that a sheet of plastic had been laid out on the floor with a towel on it and a coffee table turned upside down on top of it in the bedroom. The landlord stated they observed a black stain approximately 12 inches in

diameter. On March 21, 2013 the landlord hired a third party contractor to assess and inspect the bedroom. On March 27, 2013 the landlord gave the tenant 24 hours notice to remove her belongings from the bedroom in preparation for the contractor to come in and resolve the issue. The tenant denied the landlord and contractor access to the unit. The landlord issued a One Month Notice to End Tenancy for Cause on March 28, 2013 with an effective date of April 30, 2013. The landlord issued the Notice on the basis that the tenant had significantly interfered with or unreasonably disturbed another occupant or landlord. When the landlord was finally able to access the unit the contractor advised that it was a spill or accident that was not cleaned up and not mould as reported by the tenant. The landlord stated the tenant made multiple phone calls and sent many e-mails about this situation and how she felt the contractor was unqualified and that she would contact the local MLA and the ministry. The landlord stated the contractor was fully qualified to conduct the work and any necessary repairs. The landlord stated that they gave the tenant notice three separate times to enter the unit to resolve the issue but were denied access by the tenant. The tenant eventually allowed access to have the work conducted. The landlord is seeking an order of possession.

The tenant gave the following testimony:

The tenant stated that she agreed with much of what the landlords stated in their testimony. The tenant stated that her only concern was in how the landlords' contractor was dealing with the mould issue and that she had not denied access. The tenant stated she was very willing to have the work be conducted but only if it was done in an appropriate and safe manner in accordance with industry standards. The tenant stated that she felt the contractor was being careless in his comments and actions as to imply that shampooing the carpets would resolve the issue. The tenant stated that her primary concern is that the mould is removed and that the safety of her family and herself is paramount. The tenant indicated that the landlord has conducted some of the work.

Analysis

Rules of Procedure Rule 2.3 allow an Arbitrator to dismiss unrelated disputes in a single application. The primary issue before me is the state of the tenancy; whether it is to end or whether it continues. Both parties made reference to monetary claims and amounts during the hearing. Both parties wished to amend the amounts sought as well. The late nature of these amendments to the amount and changes on the day of hearing would make it inappropriate to be dealt with at this. I do not find this issue to be related to the other issues as applied for and dismiss both parties' monetary claims with leave to

reapply. This was discussed and explained to both parties. Both parties indicated that they understood.

The relationship between these two parties is an acrimonious one. The parties spent a portion of the hearing referring to issues that occurred in the past and are not subject of this hearing. It became very apparent that these parties have had a strained relationship over the years and a sense of hostility was present. As both parties have filed an application I will deal with each of their claims and my findings as follows.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant is seeking an order to limit the landlords' access to the unit. The landlord was clear and concise throughout the hearing that they provided 24 hours advanced written notice to enter the unit. The tenant did not dispute that point. The landlord must have the ability to conduct their business and repairs if necessary in a timely fashion. I find that the landlord has acted appropriately and dismiss this portion of the tenant's application.

The tenant is seeking an order to have emergency repairs conducted. Both parties provided documentation, testimony and photos of the ongoing repairs that are taking place. The landlords are carrying out the necessary repairs at this time. The tenant has not provided sufficient evidence that emergency repairs are required. The tenant has not satisfied me on the burden of proof based on the balance of probabilities, and I therefore dismiss this portion of the tenant's application.

The landlord is seeking an order of possession. The tenant is seeking to have the notice set aside. The landlord issued the notice after the tenant refused entry to the unit on the first occasion. When a landlord issues a notice under Section 47 they must show cause for issuing that notice and how the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find that the landlord did not have cause to issue the notice on March 28, 2013 due to a one time denial of access from the tenant on March 27, 2013. Although there were subsequent claims of denial of access, the tenant was adamant that she did not refuse access after the initial occurrence. Based on the above I find the One Month Notice to End Tenancy for

Cause dated March 28, 2013 with an effective date of April 30, 2013 is set aside. The notice is of no effect or force.

As the landlord has not been successful they are not entitled to the recovery of their filing fee.

Conclusion

The Notice is set aside, the tenancy continues.

The tenant and landlords monetary claims are dismissed with leave to reapply.

The remainder of both parties' applications are 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: April 22, 2013

Residential Tenancy Branch