



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ling and Lok Enterprises Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, FF
CNC, MNDC, OLC, RR, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / and recovery of the filing fee; and ii) by the tenants for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, tenancy began on June 1, 2000. Presently, monthly rent is \$1,020.16, and it is due and payable in advance on the first day of each month. A security deposit of \$415.00 was collected.

On or about April 18, 2013, a flood occurred in a unit situated above the tenants' unit. The unit which is the subject of this dispute is 1 of 3 units that suffered damage as a result of the flood. There is no dispute that the landlord quickly contacted restoration services who assessed the damage and commenced remediation / restoration.

Immediately thereafter, there was frequent contact between the landlord and the tenants by way of telephone and e-mail. In summary, the landlord sought to have the tenants vacate the unit in a timely fashion while necessary repairs were undertaken.

The landlord considers that the tenants hindered the expeditious undertaking of the work, in part, because they did not have insurance coverage to address costs arising from relocating to alternate accommodation, storage and so on. In this regard the landlord claims there was a breach of a material term of the tenancy agreement. During the hearing the tenants testified that they now have appropriate insurance coverage.

During the course of her visit to the unit, the landlord also concluded that the tenants committed a material breach the tenancy agreement by owning a cat. In this regard, the tenants claim that other agents for the landlord have been aware of the cat and have said nothing. In any event, the landlord instructed the tenants by letter dated May 8, 2013, to “remove the cat(s) permanently from your suite by May 24, 2013.”

For their part, the tenants consider that undue pressure to vacate the unit was brought to bear by the landlord, such that they felt “harassed / coerced into signing the mutual agreement to end tenancy...” As well, the tenants claim that specific details related to access required to their unit for restoration were not readily made available to them and, further, that it was not clear whether a temporary or permanent relocation was being sought by the landlord. Compensation sought by the tenants arises principally out of their claim that there has been a breach of their right to quiet enjoyment.

Ultimately, the landlord issued a 1 month notice to end tenancy for cause dated April 30, 2013. The tenants filed an application to dispute the notice on May 1, 2013. A copy of the notice was submitted in evidence. Reasons identified on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The tenants testified that they have temporarily moved out of the unit on May 7 and 8, and are presently staying with family while repairs are completed. The landlord was unable to confirm a date by when it is anticipated that repairs will be completed.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence, the testimony of the parties, and the relevant legislation and Guidelines, the respective claims and my findings are set out below.

LANDLORD

Section 47 of the Act speaks to **Landlord's notice: cause**, in part as follows:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I find there is insufficient evidence to support the landlord's application for an order of possession on the basis of grounds identified in the 1 month notice to end tenancy. Specifically, while it might be argued that the tenants did not do due diligence in having insurance at the start of tenancy in anticipation of a need to mitigate potential loss, I find that the absence of insurance does not constitute a breach of a material term of the tenancy agreement.

Related to this finding, the attention of parties is drawn to Residential Tenancy Policy Guideline #8 which speaks to "Unconscionable and Material Terms," in part as follows:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of

the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

Further, for the moment at least, I find that the tenants have responded to the landlord's instruction by letter dated May 8, 2013 by removing their cat from the unit. Accordingly, the possession of a pet is not currently grounds for the alleged breach of a material term of the tenancy agreement. In addition to Guideline # 8, as above, in this regard the attention of the parties is drawn to Residential Tenancy Policy Guideline #28 which addresses "Pet Clauses."

In relation to the landlord's allegation that the tenants, by way of their conduct and behaviour, "significantly interfered with or unreasonably disturbed" the landlord, in summary I find that this dispute arises in large measure out of the stress, frustration and uncertainty variously experienced by both parties in the aftermath of the flood. I find that the tenants' conduct and behaviour was not intended to interfere with the restoration process, and I find that the tenants did not wilfully set out to be unreasonable in their dealings with the landlord. This tenancy appears to have successfully spanned a period of nearly 13 years. In the result, the 1 month notice to end tenancy for cause is hereby set aside, and the tenancy presently continues in full force and effect.

TENANTS

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment:**

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As well, Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment."

I find there is insufficient evidence to support the tenants' claim that the landlord's conduct constitutes a breach of their right to quiet enjoyment. As previously noted, both parties experienced "stress, frustration and uncertainty" as a result of the flood damage. Accordingly, the claim for compensation arising from an alleged breach of this right is hereby dismissed.

Further, as the tenants have presently vacated the unit, restoration work is in progress, and the parties have apprised themselves of relevant statutory provisions, I find there is no requirement that I issue orders instructing the landlord to comply with the Act, regulation or tenancy agreement. This aspect of the tenants' application is therefore also hereby dismissed.

Rent has currently been paid to the end of May 2013, and as earlier noted, it is presently unknown when restoration work will be completed. In the result, I find that the application for a reduction in rent for "repairs, services or facilities agreed upon but not provided" to be premature, and it is therefore hereby dismissed with leave to reapply.

Finally, in relation to the circumstances of this dispute the attention of the parties is also drawn to the following particular sections of the Act:

Section 29: **Landlord's right to enter rental unit restricted**

Section 32: **Landlord and tenant obligations to repair and maintain**

Section 33: **Emergency repairs**

Conclusion

The notice to end tenancy is hereby set aside, the landlord's application for an order of possession is hereby dismissed, and the tenancy presently continues uninterrupted.

The tenants' application for a reduction in rent for repairs, services or facilities agreed upon but not provided is hereby dismissed with leave to reapply. With the exception the tenants' application for cancellation of the notice to end tenancy, all other aspects of the tenants' application are hereby dismissed.

The respective applications to recover the filing fee are both hereby dismissed.

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: May 31, 2013

Residential Tenancy Branch