



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTSEA CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC LRE

Preliminary Issues

The parties confirmed the correct spelling of the Landlord's corporate name and that the name includes the initials "LTD" at the end. Accordingly, the style of cause was amended to include the correct spelling of the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

During the course of this proceeding the Landlord's telephone continued to ring and disrupt the hearing. After several requests to have the Landlord unplug this phone they told me they could not prevent the phone from ringing and they could not unplug it. I requested that they hang up and call back using a different phone to prevent further disruptions. The Landlord disconnected from the hearing at 9:25 a.m., moved into a different room, and reconnected to the teleconference at 9:26 a.m. with a different telephone.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 23, 2013 and amended on May 28, 2013 by the Tenant. The Tenant is seeking to cancel a Notice to end tenancy issued for cause; Order the Landlord to comply with the Act, regulation or tenancy agreement; and to suspend or set conditions on the Landlord's right to enter the rental unit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued May 24, 2013, be cancelled or upheld?
2. Should conditions be set on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord submitted 94 pages of documentary evidence which included, among other things, copies of: the 1 Month Notice issued May 24, 2013; the tenancy agreement; tenant payment ledger; the Tenant's request for repairs; a work order; a summary of events since 2005; their written submission; incident reports from May 17, 2013 and May 24, 2013; a noise complaint warning dated May 21, 2013; a notice to enter for annual inspection posted May 22, 2013; a notice of claim filed in BC Provincial Court in May 2010; and various other documents from 2005 to 2010.

The Tenant submitted documentary evidence which included, among other things, copies of: the tenancy agreement; his written submission; the manager's written statement dated January 21, 2013; and the May 21, 2013 warning letter.

The parties confirmed they entered into a written fixed term tenancy agreement that began on July 1, 2005 and switched to a month to month tenancy agreement after December 31, 2005. Rent began at \$470.00 per month and has since been increased to \$541.00 per month. On June 21, 2005 the Tenant paid \$235.00 as the security deposit.

Upon review of the 1 Month Notice issued May 24, 2013, the Resident Manager, (hereinafter referred to as Landlord), initially testified that he posted this Notice to the Tenant's door in the presence of a witness. The Tenant advised that the Notice was personally served to him. The Landlord then changed his testimony to say he personally served the Notice in the presence of the Assistant Manager. The Assistant Manager advised that she was not with the Landlord during service; rather, it was her co-worker. At this point the Landlord admitted that he did not make notes on how the Notice was served and was attempting to speak from memory but in fact he did not remember how he served the Notice.

The Landlord provided testimony about the reasons why the 1 Month Notice was served on May 24, 2013. He began by speaking in general terms about how the Tenant's behaviour has become threatening and abusive towards the Landlord and his staff. He said the Tenant tries to intimidate them and attempts to get them to react violently with

him. He claimed this has been an ongoing problem and they simply do not want to deal with this any longer.

The Landlord stated that in the recent past the Tenant had completed a written request for repairs to his unit. The Tenant signed the request form which states he is authorizing the maintenance staff to enter his unit. The Landlord said he was of the opinion that this was the only authorization they needed to enter the unit to complete the repairs; however, the Tenant refuses them access when they do not post a notice of entry. He said that because of the Tenant's past behaviour they only have one maintenance person who can work in the Tenant's unit. He informed the Tenant that the work would be completed when that maintenance person was available. A few days later the Tenant came to the office upset about this arrangement and he told them he was refusing entry and cancelled his repair requests in writing.

Sometime after the above incidents the Landlord posted a notice of entry to the Tenant's door on May 22, 2013, at 9:00 a.m. for annual inspections to be conducted during the week of May 27 – 31, 2013. The Tenant filed an application for dispute resolution at the *Residential Tenancy Branch* May 23, 2013, and personally served the Landlord with the Notice of Dispute Resolution that same day. The Landlord stated that the Tenant does not like the way he handles situations. So after receiving the notice of disputes resolution they decided to issue him the 1 Month eviction notice.

The Tenant confirmed that he refused the Landlord and his staff access to his unit because they were not providing him with proper notice of entry. He testified that he had changed his lock and that after speaking with his legal advocate he found out he was not allowed to do that. When he was able to save up enough money he paid to have the lock changed back to fit the Landlord's master key.

I confirmed that the Tenant was calling into the proceeding from inside his rental unit. Then I instructed the Assistant Manager and the Maintenance person to go to the Tenant's unit and test his lock to make sure the master key would unlock his door, while the hearing was continuing. After doing the test the Landlord's agents confirmed that the lock had been returned to the master key and that they were able to unlock it.

Upon review of the notice of entry submitted into evidence by the Landlord I informed all parties that this notice of entry does not comply with section 29 of the Act as it does not provide a specific date of entry. I have posted section 29 of the Act to the end of this decision for review. I also informed the Landlord that a tenant has the right to refuse entry for regular maintenance or repairs if the Landlord does not provide proper written notice. The Landlord cannot allow his maintenance staff to enter the units "whenever

they are available” they must provide proper written notice that complies with the Act, and must consider timeframes for the service methods used, as stipulated in section 90 of the Act. Examples were discussed in the hearing and the Landlord stated that he now understood.

The Tenant confirmed that he understands now how a notice of entry must be written and served. If acknowledged that if the Notice is done correctly then he has no authority to prevent a Landlord or their agents from entering his rental unit. He confirmed that he also understood that a Landlord or their agent could enter his suite, in his absence, if proper notice was provided. The Tenant stated that he is aware that if the Landlord is able to prove that he prevented access when proper notice was provided or if he changed his lock again, without proper authorization, in the future, the record of these events would form part of the Landlord’s case for eviction should it again come before another arbitrator.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

Notwithstanding the documentary evidence which pertains to issues that arose over three years ago, or after the Notice was issued, I find the Landlord provided insufficient evidence to support the reasons for which the 1 Month Notice was issued. I make this finding in part because the most recent disruptions relate directly to the Tenant’s response to invalid notices of entry issued by the Landlord. Furthermore, based on the Landlord’s testimony, I find the 1 Month Notice was issued as a retaliatory response to the Tenant filing an application for dispute resolution.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application for dispute resolution, or for seeking or obtaining a remedy under the *Residential Tenancy Act*, may be found to have committed an offence and is subject to a fine or administrative penalty.

Based on the aforementioned I find that the Landlord has not succeeded in meeting the burden of proof for issuing the 1 Month Notice to End Tenancy issued on May 24, 2013, and I therefore cancel the Notice.

The Landlord is now aware of his obligations under the Act; therefore, I dismiss the Tenant's request to have the Landlord ordered to comply with the Act.

Based on the evidence before me I find there is insufficient evidence to warrant setting conditions on the Landlord's right to enter the rental unit. Therefore, I dismiss the Tenant's request.

Conclusion

I am granting the Tenant's application to set aside the 1 Month Notice to End Tenancy issued May 24, 2013, and this tenancy shall continue.

The 1 Month Notice to End Tenancy, issued May 24, 2013, is HEREBY CANCELLED and is of no force or effect.

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: June 20, 2013

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) 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 following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (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.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

