



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, DRI, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to dispute an additional rent increase; and to recover the fee for filing the Application for Dispute Resolution.

There was insufficient time at the hearing to consider the application to dispute an additional rent increase. The Tenant was given the option of requesting an adjournment or withdrawing the application to dispute an additional rent increase and the Tenant opted to withdraw the application to dispute an additional rent increase.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch on September 05, 2013. The Landlord stated that copies of these documents were personally served to the female Tenant on September 12, 2013. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on September 09, 2013. The male Tenant stated that copies of these documents were mailed to the Landlord on September 09, 2013. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch on September 12, 2013. The Landlord stated that copies of these documents were not served to the Tenant. As they were not served to the Tenant they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that the female Tenant moved into the rental unit in 2009. The Landlord stated that there is no written tenancy agreement and the Tenant contends there is a written tenancy agreement, a copy of which was submitted in evidence.

The Landlord acknowledged that his signature appears on the last page of the tenancy agreement, but he stated that he does not know how his signature was added to the tenancy agreement. The female Tenant stated that the agreement was signed by both parties at the start of the tenancy and that the Landlord provided her with a copy of the signed agreement.

The Landlord and the Tenant agree that there are three suites in this residential complex, one of which is occupied by the Landlord. The Landlord stated that each suite has a kitchen, that the kitchen in this rental unit is a common area that he has the right to access; that the two suites in the upper portion of the complex have private bathrooms; and that the rental unit has a common bathroom that can be used by other occupants of the residential complex. The male Tenant stated that there was no agreement that anyone else in the residential complex could use the kitchen or bathroom that was included in this tenancy.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was served on the Tenant on August 08, 2013, which declared that the Tenant must vacate the rental unit by September 30, 2013. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the Landlord; that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk; that the Tenant has engaged in illegal activity that has, or is likely to, damage the Landlord's property; and that the Tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the Landlord.

The Landlord stated that the Tenant has engaged in illegal activity by failing to follow the "house rules".

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant will not comply with his request to keep the front door of the rental unit closed. The Landlord stated that he has had a problem with rodents in the rental unit; that a rat was caught in a trap in the attic in January of 2013; that he has asked the Tenant to keep the front door of the rental unit closed, as he believes it is possible the rodents are accessing the rental unit through that door; that the Tenant has left the front door open

at least 13 times in one month; and that he does not know if rodents have accessed the rental unit.

The male Tenant stated that the Landlord has asked them to keep their front door closed; that they have left their door open on occasion; that he has observed rodents outside the house; and that he has not seen evidence of rodents inside the rental unit.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant installed a locking door handle on the "common" bathroom. The male Tenant stated that the door handle was installed by the Landlord.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant placed a broken table beside the furnace in the "furnace room", which was a fire hazard. He stated that he moved the table once he found it. The male Tenant stated that he placed the table approximately 4 feet away from the furnace and that it was not a fire hazard.

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant placed items on the floor of the "sump room", which would have prevented him from accessing the sump pump if necessary. The Landlord provided a photograph of some small items covering the floor of this room. The Landlord stated that he asked the Tenant to remove this property "sometime in August" and that it has not yet been removed.

The male Tenant stated that they did store some property on the floor of the "sump room", that "sometime in August" the Landlord asked the Tenant to remove their property from the room; and that all of the property was removed "sometime in August".

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant has denied him access to two storage areas that he must access by entering the kitchen in the rental unit. The Landlord stated that the Tenant denied him access in a letter, although he was unable to find that letter in the evidence that was submitted.

The male Tenant stated that he has never prevented the Landlord from accessing his storage areas, providing the Landlord provides written or verbal notice. The Landlord argued that he does not have to provide notice, as the kitchen is a "common area".

The Landlord stated that he wishes to end this tenancy, in part, because the Tenant has placed a "threatening note" in the common area of the rental unit. The note declared that a closed circuit television is in use and that the police will be called if "you get into downplace again".

The male Tenant stated that this note was posted because they believed the Landlord was entering the rental unit without authority.

Analysis

I find that the Landlord and the female Tenant entered into a written tenancy agreement. In reaching this conclusion, I was heavily influenced by the tenancy agreement that was submitted in evidence, which corroborates the female Tenant's testimony that the parties signed an agreement. In the absence of a reasonable explanation of how the Landlord's signature was added to the last page of that tenancy agreement, I find that it is likely that the parties did sign the agreement and the Landlord has either forgotten that he signed it or he is not being truthful in regards to the tenancy agreement.

I favour the testimony of the male Tenant, who stated that the tenancy provided the Tenant with exclusive use of the kitchen and bathroom in the rental unit, over the testimony of the Landlord, who stated that the kitchen and bathroom were common areas. In reaching this conclusion I was heavily influenced by the tenancy agreement, which is a standard tenancy agreement, which makes no reference to a shared kitchen or bathroom. In reaching this conclusion I was also influenced by my determination that that version of events provided by the Tenant is simply more believable than the version of events provided by the Landlord, as I can find no reason why the kitchen and bathroom would be a common area when the occupants of the upper suites had exclusive use of a bathroom and kitchen.

Section 47(1)(e) of the *Act* authorizes a landlord to end a tenancy, in certain circumstances, if the Tenant engages in illegal activity. For the purposes of the *Act*, an illegal activity refers to a violation of a provincial or a federal statute. As the Landlord has submitted no evidence to show that the Tenant or a person permitted on the residential property by the Tenant has violated a provincial or federal statute, I find that the Landlord has not established grounds to end this tenancy pursuant to section 47(1)(e) of the *Act*.

Section 47(1)(d) of the *Act* authorizes a landlord to end a tenancy if the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the Landlord; or the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

I find that the Landlord has submitted insufficient evidence to show that rodents are entering the residential complex through the front door of the rental unit. In the absence of evidence that shows this is the point of entry, I find that there is simply no evidence to support this speculation. In reaching this conclusion I was influenced, in part, by the absence of evidence from a pest control specialist that shows there are no other entry points to the attic and by the absence of evidence to show that rodents have accessed the rental unit.

As there is no evidence that this is the entry point, I find it unreasonable for the Landlord to ask the Tenant to keep the front door closed, as it is reasonable for a Tenant to keep a door open for ventilation purposes. It may be reasonable for the Landlord to make this

request if the Landlord installs a screen door on the front door, which would enable the Tenant to ventilate the room. I therefore find that the Tenant's decision to leave the door open, on occasion, is not grounds to end this tenancy.

I find there is insufficient evidence to establish who installed the new handle on the bathroom door. Even if I did find that the Tenant had installed the new handle, I would not find that it was grounds to end this tenancy, as the installation is primarily a cosmetic change that does not significantly interfere with or unreasonably disturbed another occupant or the Landlord; it does not jeopardized the health or safety or lawful interest of another occupant or the Landlord; and it does not put the Landlord's property at significant risk.

I find there is insufficient evidence to establish that the Tenant endangered the safety of the Landlord's property by placing a table beside the furnace. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that the placement of the table was a fire hazard, such as a statement from a fire inspector. I was also influenced by the absence of evidence that refutes the Tenant's statement that the table was placed four feet away from the furnace and did not place the property at risk. In the event that the Landlord is able to lock the "furnace room", I would strongly recommend that he do so, which will prevent occupants of the residential complex from storing property in that room in a manner that the Landlord feels is unsafe.

I find there is insufficient evidence to establish that the Tenant did not remove their property from the "sump room" within a reasonable period of time after being asked to remove it in August. Even if I did find that the Tenant had not removed their property from this room, I would not find that it was grounds to end this tenancy, as the items in the room are small and could be removed with little effort in the event the Landlord needed to access the sup pump. I therefore cannot conclude that the property stored in the room significantly interfered with or unreasonably disturbed another occupant or the Landlord; that it jeopardized the health or safety or lawful interest of another occupant or the Landlord; or that it put the Landlord's property at significant risk.

As I have previously determined that the kitchen and the bathroom are not common areas, I find that the Landlord must give notice to enter these rooms, in accordance with section 29 of the Act, whenever he wishes to access the unit, including access for the purpose of accessing his storage areas. In the absence of evidence that shows the Tenant has refused to allow the Landlord to enter the rental unit after receiving proper notice to enter the unit, I find that the Landlord does not have grounds to end the tenancy on the basis of being denied access to his storage areas.

Given the Landlord's belief that he can access the rental unit without proper notice, as he believes it is a "common area", I find that it is reasonable for the Tenant to be concerned that the Landlord is accessing their rental unit without proper authority. I therefore find that the note regarding CCTV was a reasonable attempt to protect their privacy and I do not find that it is cause to end this tenancy.

As the Landlord has not established grounds to end this tenancy, I grant the Tenant's application to set aside the Notice to End Tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to recover the fee for filing the Application.

Conclusion

The Tenant has established a monetary claim, in the amount of \$50.00, which represents compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution and I grant the Tenant a monetary Order for this amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. In the event that the Tenant does not wish to file this Order with the Province of British Columbia Small Claims Court, I authorize the Tenant to reduce one monthly rent payment by \$50.00, providing the Tenant gives the Landlord written notice of why the rent is being reduced by \$50.00.

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: September 18, 2013

Residential Tenancy Branch

