



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 388 Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, MNDC, AAT

Introduction

This hearing was scheduled 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, for a monetary Order for money owed or compensation for damage or loss, and for an Order requiring the Landlord to provide access to the rental unit or the site.

The Advocate for the Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord, via registered mail, on October 02, 2013. The Advocate cited a tracking number that corroborates this testimony. In the absence of evidence to the contrary, I accept that these documents have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

The Tenant stated that he submitted a copy of the Notice to End Tenancy to the Residential Tenancy Branch on September 30, 2013, however I did not have a copy of that document before me at the time of the hearing. As evidence is occasionally lost by the Residential Tenancy Branch, the Tenant was permitted to resubmit a copy of the Notice. The Advocate for the Tenant stated that she would fax a copy of the Notice to the Residential Tenancy Branch on the afternoon of October 16, 2013.

I note that the Notice to End Tenancy was not received prior to the rendering of this decision on October 17, 2013. After reviewing the evidence on this matter I determined I was able to consider the matter without viewing the Notice to End Tenancy and I rendered my decision without viewing the Notice, given the urgent nature of the issues at hand.

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; is there a need to order the Landlord to provide the Tenant with access to the residential complex; and is the Tenant entitled to compensation for having restricted access to the residential complex?

Background and Evidence

The Advocate for the Tenant stated that this tenancy began on August 20, 2013 and that the Tenant is required to pay monthly rent of \$750.00 by the first day of each month.

The Tenant stated that he received a One Month Notice to End Tenancy for Cause, which was dated September 16, 2013. He stated that the Notice was posted on his door and he believes he received it on September 17, 2013 or September 18, 2013.

The Advocate for the Tenant stated that the reasons cited for ending the tenancy on the One Month 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; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; 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 Tenant denies all of these allegations.

The Advocate for the Tenant stated that the One Month Notice to End Tenancy declares that the Tenant must vacate by October 16, 2013.

The Advocate for the Tenant stated that the Tenant attended the Residential Tenancy Branch on September 23, 2013 for the purpose of disputing the Notice to End Tenancy but the Tenant did not file an Application for Dispute Resolution at that time as the Tenant did not have information to support a request for a fee waiver.

The Advocate for the Tenant stated that the Tenant attended the Residential Tenancy Branch on September 25, 2013 for the purpose of disputing the Notice to End Tenancy but the Tenant did not file an Application for Dispute Resolution at that time as the Tenant did not have information to support a request for a fee waiver.

The Advocate for the Tenant stated that the Tenant attended the Residential Tenancy Branch on September 30, 2013, at which time the Tenant filed this Application for Dispute Resolution.

The Tenant stated that on September 15, 2013 the Landlord and a representative of the Strata Corporation asked his girlfriend, who also lives in the rental unit, for the fob that provides electronic access to the residential complex. She was told that the security system was being refitted and that the fob would be returned the following day. The Tenant stated that he has asked for the fob to be returned on several occasions but the

Landlord has not complied with that request.

The Advocate for the Tenant stated that her organization has contacted the Landlord on two occasions in an attempt to have the fob returned. She stated that the Landlord spoke with her co-worker on September 17, 2013 and informed the co-worker that the fob was with the strata corporation.

The Tenant stated that because they do not have access to the residential complex they must either buzz other occupants of the complex to request access to the complex or they must wait outside the complex until someone exits or enters the building. The Tenant is seeking compensation of \$25.00 per day for each day they have been without the fob.

Analysis

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant received a One Month Notice to End Tenancy on September 17, 2013 or September 18, 2013, which had a declared effective date of October 16, 2013.

Section 47(2) of the *Residential Tenancy Act (Act)* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice prior to the end of September and the rent is due by the first of each month, the earliest effective date of the Notice is October 31, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is October 31, 2013.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by the effective date of the notice unless the tenant disputes the notice within ten days of receiving it. The undisputed evidence is that the Tenant filed the application to dispute the Notice to End Tenancy on September 30, 2013.

As the Tenant received the Notice to End Tenancy on, or before, September 17, 2013, I find that the Tenant was required to file the application to dispute the Notice to End Tenancy by Friday, September 27, 2013.

A party filing an Application for Dispute Resolution must either pay a filing fee or make application for a fee waiver before the Application will be accepted by the Residential Tenancy Branch. On the basis of the testimony of the Tenant, I find that the Tenant attempted to dispute the notice to end tenancy within the legislated time period on two

occasions but was prevented from doing so by the need to apply for a fee waiver. I therefore find it reasonable to extend the time limit for filing an application to dispute the Notice by one business day, pursuant to section 66(1) of the *Act*. Given that the delay in filing the application was directly related to the financial circumstances of the Tenant and the Tenant only missed the deadline by one business day, I find the extension is reasonable and appropriate.

As the Tenant has denied the allegations in the One Month Notice to End Tenancy and the Landlord did not attend the hearing in support of the Notice, I find that there is no evidence to show that the Landlord has grounds to end the tenancy in accordance with section 47 of the *Act*. I therefore grant the Tenant's application to set aside the Notice to End Tenancy that is dated September 16, 2013.

Section 30(1) of the *Act* stipulates that a landlord must not unreasonably restrict a tenant's access to residential property. I find that the Landlord has breached section 30(1) of the *Act* by failing to ensure the Tenant has a fob that provides the Tenant with electronic access to the residential complex or to ensure that the Tenant has some method of accessing the residential complex. Even if the Landlord is not in physical possession of the fob, I find that the Landlord has a duty to communicate with the strata corporation to ensure the Tenant has the ability to access the residential complex.

I find that the Landlord's failure to ensure the Tenant had access to the residential complex significantly interfered with the Tenant's right to the quiet enjoyment of the rental unit and that it significantly reduced the value of the tenancy. Pursuant to section 67 of the *Act*, I find that the Tenant is entitled to compensation in the amount of \$375.00 for the period between September 15, 2013 and October 16, 2013, which is the equivalent of 50% of the monthly rent. Given that the Tenant was still able to use the rental unit once they gained access to the residential complex, I find the claim of \$25.00 per day is excessive, given that this would entitle them to compensation that is greater than the rent paid for that period of time.

I also order the Landlord to immediately provide the Tenant with reasonable means of accessing the residential complex. I authorize the Tenant to reduce future monthly rent payment(s) by \$17.50 for each day the Tenant is without access to the residential complex, beginning on October 17, 2013 and continuing until they receive a fob or key that allows them access to the residential complex or until such time as the Landlord files an Application for Dispute Resolution seeking a suspension of this rent reduction.

Conclusion

I find that the Tenant has established a monetary claim of \$375.00 and I grant the Tenant a monetary Order for this amount. In the event that 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 the Tenant elects not to enforce this Order through the Province of British Columbia Small Claims Court, I authorize the Tenant to reduce a future rent payment(s) by this amount, pursuant to section 72(2) of the *Act*.

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: October 17, 2013.

Residential Tenancy Branch