



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC RP LRE O FF

Preliminary Issues

After reviewing the Tenant's application for dispute resolution and the attached details of the dispute, I noted that she listed "issue #1" disputing a 2 Month Notice to end tenancy; however, she did not check off the box to request to cancel the Notice to end tenancy. The Tenant stated that the clerk at the *Residential Tenancy Branch* assisted her in completing the application and she was told to check off the "other" box to ensure that all of her issues were covered.

Based on the above, I find the Tenant made a clerical error in not checking off the box to request to cancel the Notice to end tenancy. The Landlord was aware that this formed part of the dispute as it was outlined in the details of the dispute served by the Tenant. Accordingly, I amended the application to add the request to cancel the Notice to end tenancy, pursuant to Section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed December 16, 2013, by the Tenant, to obtain the following Orders: To cancel a Notice to end tenancy for landlord's use of the property; to have the Landlord comply with the Act, regulation or tenancy agreement; to Order the Landlord to make repairs to the unit, site or property; for other reasons; and to recover the cost of the filing fee from the Landlord for this application.

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, respond to each other's testimony, and to provide closing remarks. 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) Has a valid 2 Month Notice to end tenancy been issued on December 2, 2013?
- 2) Should the Tenant be allowed to operate electric oil heaters in her suite?
- 3) Can the Landlord restrict how much laundry the Tenant does?
- 4) Should the Landlord be ordered to comply with the Act?
- 5) Are repairs required to the rental unit, site, or property?

Background and Evidence

The undisputed evidence confirmed that after the Tenant looked at the unit the parties entered into a verbal month to month tenancy agreement for \$750.00 per month which included utilities, cable and laundry. The Tenant was granted occupancy of the unit as of October 31, 2013 and on approximately October 8, 2013 the Tenant paid \$375.00 as the security deposit.

The Tenant submitted that since moving into the rental unit she has been having problems with the Landlord on the following issues; (1) the Landlord keeps the rental unit too cold; (2) the Landlord is entering her suite without proper notice; (3) the Landlord has changed out her light bulbs without notice; (4) the Landlord has disabled the laundry machines; (5) the Landlord has served her an invalid notice to end tenancy; and (6) the Landlord has changed her ability to store her bike and her door.

The Tenant testified that the rental unit is being kept too cold so she is seeking repairs so that the heat will be adequate to warm her unit. Her suite is in the main or lower level of the house, which is above ground, and the Landlord lives with his family in the upper level and controls the forced air heating from the thermostat located in his area of the house. She noted that the heating vents for her area are located in the ceiling. She pointed to her photographic evidence which shows thermometers leaning up against windows which display inside temperatures as low as -4 degrees Celsius. She stated that she requested the Landlord turn up the heat but he refused and told her that he would not pay more than \$65.00 a month for electricity. She stated that the Landlord turns off the heat during the day and that it does not come back on until 4:00 p.m. It has been so cold in her rental unit that she purchased electric oil heaters. She came home

one day to find a note left inside her unit by the Landlord telling her she cannot use the electric heaters.

The Landlord denied keeping the heat turned down too low and denied turning the heat off during the day. He confirmed that he left a note inside the unit telling the Tenant she cannot use the electric heaters. He argued that the temperatures in their city have not been below zero during November and December and therefore her rental unit could not be below zero and therefore, her photos must be falsified. He testified that he keeps the thermostat set at 22 degrees Celsius and the heat is always on. He confirmed that the thermostat is located in his suite and is controlled by him.

The Landlord argued that the Tenant's testimony was incorrect and the only time he was in her suite was to respond to the Tenant's request for repairs. He confirmed that he had energy saving CFL bulbs throughout the unit and when he attended he had found that the Tenant had replaced several of the bulbs with 100W bulbs so he changed them back to CFL bulbs.

The Tenant confirmed that she changed light bulbs but stated she only changed them in two rooms, her bedroom and the bathroom. She argued that when she first moved into the unit there were energy saving (compact fluorescent – CFL) light bulbs in every light socket and that these CFL bulbs give her migraines so she asked the Landlord if she could change them. She only changed out a few bulbs and replaced them with regular bulbs.

The Tenant testified that when she agreed to rent this unit she was told that laundry was included. There was no set schedule at the beginning and after moving in she did a couple loads of washing. One time she came back to check her laundry and found that the settings had been changed from using hot water to warm water and the Landlord's wife became very upset with her. The next time she went to use the laundry she found the machines had been disabled and she was told by the Landlord that she could only use the laundry on Friday and she was being limited to one load per week. She argued that a limit of one load of laundry per week does not enable her to wash her bedding or comforter and that she has been forced to take a couple loads elsewhere to wash.

The Tenant stated that after discussing these issues with the Landlord and his wife she was served one page of a 2 Month Notice to end tenancy on December 2, 2013. Sections of the first page of the Notice were blacked out and there was no second page explaining why she was being evicted. She argued that the Landlord operates as if the *Residential Tenancy Act* does not apply to him so she filed for dispute resolution. The day after she served the Landlord the hearing documents he told her to remove her bike

and door from the garage and told her that she could no longer keep them in there. She said that she was given permission from the beginning of the tenancy to store those items in there.

The Landlord confirmed that he restricted the Tenant's use of the laundry to one load per week because she began doing numerous loads a week. He stated that he discussed which day she wanted to do laundry with her and she picked Fridays. He said he disconnected the laundry and argued that when the Tenant uses the laundry she leaves the garage unsecured. He explained that the laundry machines are located in the garage and that the door that is used to enter the garage does not have a lock. When asked how the garage is secured then, he says that they close the door. He said the Tenant does not close the door when she uses the laundry or gets her bike out of the garage.

The Landlord agreed that he told the Tenant to remove her door and bike from the garage. He argued that it was a safety and space issue and that he was worried her bike or door would fall and scratch his vehicle. He said he gave the Tenant permission at the beginning to store her bike but never agreed for her to keep an old door in the garage; she simply showed up with it and put it in the garage when she moved in. He claimed that he only parks his car in the garage in the winter and that is why it became a safety concern in mid December.

In closing, the Tenant requested that the Notice be cancelled and the issues around her use of the laundry and heat are determined. A discussion took place about obligations of both a landlord and tenant and I informed both parties of the need for them to learn their rights and obligations as set out in the *Residential Tenancy Act*.

Analysis

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the undisputed standard terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*

and are as follows: The rent is payable on the first of each month in the amount of \$750.00 and utilities, cable, and laundry are included in that rent.

Upon review of the 2 Month Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act as it was altered with black felt pen to remove stipulated information and only one page of the two page Notice was served upon the Tenant. Upon consideration of all the evidence presented to me, I hereby cancel the 2 Month Notice to End Tenancy issued December 2, 2013.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Normal room temperature is considered to be 22 degrees Celsius. Allowing one party to control the heat in another rental unit that is constantly below normal room temperature is unconscionable.

The evidence supports that there is one thermostat to control heat in two separate units with the upstairs Landlord and occupants having control of the heat in the lower, main floor rental unit. I favor the Tenant's submission that the heat is being controlled at such a low temperature, and possibly shut off during the day, to the point that her unit is so cold it has caused her a loss of quiet enjoyment of her home. I find that the Landlord's explanation that he keeps the thermostat set to 22 degrees all the time, to be improbable, given his pattern of energy conservation in regards to the use of laundry and use of CFL bulbs. Rather, I find the Tenant's explanation that the rental unit is kept so cold that she purchased electric oil heaters to warm up her place, to be plausible given the circumstances presented to me during the hearing.

Based on the above, I hereby grant the Tenant the authority to use the electric oil heaters to bring her rental unit up to normal room temperature (22 degrees) during waking hours, when she is in the rental unit. For clarity, these heaters are not to be operated at night when the Tenant is sleeping, and are not to be used when the Tenant is not in the rental unit or when the temperature has reached 22 degrees.

Section 1(2) of the Regulations stipulates that any change or addition to a tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

The standard terms of this verbal tenancy agreement included the use of laundry. At the time these parties entered into the tenancy agreement there were no stipulations on the use of the laundry facilities which the Landlord unilaterally changed, without the Tenant's agreement.

Based on the foregoing, I find the Landlord cannot unilaterally enforce restrictions on the number of loads of laundry the Tenant is entitled to do, nor can he enforce stipulations on the temperature of water that can be used for the laundry. That being said, it is not uncommon for parties who share laundry facilities to agree on a schedule on the days of the week in which laundry is completed. Therefore, as there are two units sharing the laundry facility I find it reasonable that the Tenant, a single occupant, to be granted access to the laundry on two days per week. The parties have already established that Friday would be the Tenant's laundry day; therefore, I assign Tuesday and Friday as laundry days for the Tenant, unless the parties mutually agree to another two day schedule. To be clear, the Tenant is entitled to have access to the laundry two days per week, on Tuesday and Friday, between 8:00 a.m. and 10:00 p.m., and is entitled to do a reasonable amount of laundry for a single person, (2 to 3 loads per week), at her selected temperature.

The province of B.C. has announced that they are banning the use of incandescent light bulbs in 2014. I commend the Landlord for his efforts to be energy efficient and with supplying CFL or energy efficient light bulbs in the rental unit. The Tenant has argued that these light bulbs cause her migraines, however there is no evidence before me, medical or otherwise, to support her statement. Therefore, in the absence of evidence to support the Tenant's position, I find that the Tenant must use only CFL bulbs in the rental unit, as originally supplied by the Landlord.

Section 95(2) of the Act, stipulates that any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

The evidence supports that the Tenant was allowed to store her bike and a door inside the garage, from the onset of the tenancy. This access to storage came to an abrupt end the day after the Tenant served the Landlord with her Notice of Dispute Resolution. Based on the above, I find the cancellation of the Tenant's access to storage to be a retaliatory response to her seeking dispute resolution. Accordingly, I hereby order the Landlord to allow the Tenant to store her bike and door back in the garage. If the Landlord fails to do so the Tenant will be at liberty to seek monetary compensation or reduced rent for loss of services or facilities agreed upon but not provided.

Section 29 of the Act stipulates that 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).

The evidence supports that the Landlord has entered the rental unit in the past, without providing proper notice and he has taken other actions, such as restricting services, in breach of the Act. Accordingly, I hereby Order the Landlord to comply with the Act.

The Tenant has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

I HEREBY CANCEL the 2 Month Notice to End Tenancy issued December 2, 2013, and it is of no force or effect.

I HEREBY Order the Landlord and Tenant to comply with the above issued Orders and the *Residential Tenancy Act*, pursuant to section 62 of the Act.

The Tenant may reduce her next rent payment by \$50.00, as the one time award for the recovery of her filing fee.

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: February 18, 2014

Residential Tenancy Branch

