



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNR, MNDC, OLC, ERP, RPP, LRE

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy, for a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for an order that the landlord comply with the Act, Regulation, or tenancy agreement; that the landlord make emergency repairs for health or safety reasons; that the landlord return the tenant's personal property; and to suspend or set conditions on the landlord's right to enter the rental unit. The tenant amended her application during the hearing to withdraw her claim that the landlord return the tenant's personal property.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Is the tenant entitled to a monetary order for the cost of emergency repairs and/or for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the Act, Regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlord make emergency repairs for health or safety reasons?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The parties agree that the tenancy started July 1, 2011 and the tenant is obligated to pay \$700.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$350.00.

Notice to End Tenancy

The landlord gave evidence that she served the tenant with a Notice to End Tenancy for Landlord's Use (the "Notice") by personally handing it to the tenant on January 30, 2014 and by posting the Notice on the tenant's door the same day. The Notice specifies a move-out date of March 31, 2014 and provides the following reason for the Notice:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The landlord gave evidence that the rental unit is one of three suites in a house. There is one suite upstairs and two suites downstairs. The tenant occupies one of the downstairs suites. The landlord gave evidence that she was told by the City of Vancouver that there was only one living unit allowed in the building. The only suite that is currently occupied is the tenant's rental unit.

The landlord provided a copy of a letter from the City of Vancouver dated November 1, 2013 (the "COV Letter"), which reads in part:

"Our records indicate the approved use of your building is a one family dwelling.

However, a recent inspection revealed the following violation of the Zoning and Development, Building, and Electrical by-Laws:

- The first floor has been altered without permit to provide two additional dwelling units – one on the east side and one on the west side of the first floor.

Application can be made to retain only ONE dwelling unit on the first floor as a secondary suite, provided the necessary upgrading work is carried out. The other dwelling unit and its kitchen must be removed, including the kitchen sink, stove, and disconnection of the associated range wiring at the breaker panel. ...

In order to determine the necessary upgrading work, a Special Inspection will be required. ... The fee for this inspection is \$158.00 plus GST provided we receive

your application BY DECEMBER 1, 2013. After this date the regular fee of \$474.00 plus GST will apply.

In accordance with the By-laws and to avoid further action, you are to:

1. a) Make application to legalize ONE secondary suite, **AND** b) Cease occupancy and remove the remaining dwelling unit and its cooking facilities including the kitchen sink, stove, and the associated range wiring up to the supply breaker; **OR**
2. Remove both dwelling units and their cooking facilities, including the kitchen sink, stove, and the associated range wiring up to the supply breaker, and restore the building to its approved use as a one family dwelling,

BY DECEMBER 1, 2013.”

The landlord’s evidence is that the City gave her this information verbally prior to November 1, 2013 and the City told her they would send her a letter. She went to China on November 1, 2013 and had not received the letter by the time she left. Accordingly, she sent the tenant the following email on October 30, 2013: “I am sorry to let you go because of city hall require. Please refer to the attachment for notice of end tenancy. Please leave by end of nov.”

The tenant responded by email on October 31, 2013: “... could you please send the notice from the city. We have not been notified in any way.”

The landlord responded by email on November 5, 2013: “I have not got any letter from them. But they did say they would send me letter. They proved that two downstairs units are illegal. Moreover, I have to let you go because they told me my house only can have one tenant. That means only one stove is allowable in my house. So, I cannot take out upstairs stove because of you (they said only upstairs stove is ok). In addition, your rent is far to support my all expenses of my house. I hope you can understand my situation. I am going to have difficulty time paying my mortgage now. I would like you to move out as soon as possible in order to for me to rent the my whole house.”

The landlord sent the tenant another email on December 4, 2013: “Thanks for your email and patience I just come back from china. I discussed with my husband about our house. We would like to empty and clean the house and do revolution. At the same time, I will talk to city hall about house. If I cannot make it, I will put it in market. I really cannot have time taking care of it. My husband come back soon. So we would like to give you two months to move out. Thanks for your understanding.”

At the hearing, the landlord gave evidence that she gave the tenant the Notice (to evict for landlord's use) because she did not have the letter from the City of Vancouver to show the tenant. The landlord noted that an eviction based on the suite being illegal requires only one month's notice. The landlord's evidence is that her reason for ending the tenancy is because the suite is illegal so she cannot rent it out. Her evidence is that she still has to make a decision whether to sell the house or move into it.

The tenant gave evidence that she does not believe the landlord intends to occupy her rental unit, since the rental unit is about 300 square feet and the landlord has a husband and two children. As well, the tenant's evidence is that the upstairs of the house has been vacant for two months and the landlord has not started moving any possessions to the house.

The Cockroach Infestation

The tenant gave evidence that there has been a cockroach infestation in the rental unit for more than a year. Her evidence is that she first notified the landlord of the problem prior to June 1, 2013. The tenant requests an order that the landlord bring in a pest control company to deal with the problem. The tenant also requests a monetary order based on her out-of-pocket costs and the loss of some of her furniture.

The tenant gave evidence that the landlord did bring in a pest control company at some point, however the problem continued. Her evidence is that the source of the cockroach problem was the tenants who previously occupied the other downstairs rental unit. The tenant's evidence is that the landlord told her in approximately October or November 2013 that she would wait until the other tenants moved out before taking further steps to address the problem. The other tenants moved out in November or December 2013 and the landlord has not taken any further steps.

The tenant's evidence is that she notified the landlord in December 2013 that the range hood vent was starting to smell bad from dead cockroaches. The tenant's evidence is that the landlord's husband said there was a range hood in the garage, but the landlord did not take steps to replace the range hood. The tenant gave evidence that she purchased a new range hood and vent and had them installed at a cost of \$250.00 in mid-January 2014. She claims the \$250.00 as a cost of emergency repairs.

The tenant gave evidence that she disposed of possessions including a kettle and her dining room table because they were covered with cockroach eggs and droppings.

The landlord gave evidence that she did not see the possessions that the tenant claims she threw out. Further, she did not know what the \$250.00 expense was for.

The Garage

The tenant gave evidence that when she moved into the rental unit, she asked the landlord if she could use the garage and the landlord told her she could. The tenant's evidence is that she spent the summer cleaning the garage. Her evidence is that she originally shared use of the garage with the other two tenants of the building and the landlord continued to store some possessions in the garage.

At this point, the other rental units in the building are not occupied. She and the landlord each have a key to the garage. There have been problems in the past with items going missing from the garage; both items belonging to the tenant and items belonging to the landlord. The tenant wishes to have the only key for the garage. The tenant disclosed that this issue is the basis for her application to suspend or set conditions on the landlord's right to enter the rental unit.

The tenancy agreement lists "Garage/workshop" under "What is included in the rent". The landlord's evidence is that the tenancy agreement does not give the tenant sole use of the garage. Her evidence is that she never gave the tenant use of the whole garage, since it is a two car garage. The landlord continued to store possessions there.

Quiet Enjoyment

The tenant claims compensation for the loss of quiet enjoyment of the rental unit. The tenant's evidence is that she believes the landlord wishes to make more money from the property. The tenant says she offered to assist the landlord in finding new upstairs tenants but the landlord did not cooperate in finding new upstairs tenants. The tenant's evidence she has been caused stress because the landlord served her with an eviction notice. Also, the landlord's husband recently threatened to "kick her out".

Analysis

On the landlord's own evidence, she did not serve the Notice because she or a close family member intends to occupy the rental unit. The landlord said that she has not made a decision what to do with the rental property.

Section 49(3) requires that a notice to end tenancy for landlord's use which specifies that the landlord or a close family member will occupy the rental unit requires a good

faith intention on the part of the landlord to use the rental unit for the stated purpose. I find that the landlord does not intend in good faith to occupy the rental unit. On her evidence, she has not made up her mind what to do with the house. For this reason, I order that the Notice is cancelled.

The landlord's evidence indicates that the landlord's motivation for ending the tenancy is that the City of Vancouver will not permit her to continue renting out the two downstairs rental units. This is a valid reason for ending the tenancy pursuant to Section 47(1)(k) which reads:

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

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

The landlord is therefore entitled to serve the tenant with a new notice to end tenancy, based on Section 47(1)(k).

I accept the evidence of the tenant that there is a cockroach infestation in the rental unit, and the landlord has not taken any steps to address the infestation since approximately October or November 2013. Accordingly, **I order that the landlord comply with her obligations to repair and maintain residential property pursuant to Section 32 by taking immediate steps to end the cockroach infestation of the rental unit.**

The Act defines emergency repairs narrowly. Section 33(1) reads:

"In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health and safety of anyone or for the preservation of or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property."

I find there is no evidence that the tenant made repairs that meet this definition, because repairs to a stove are not among those listed in paragraph 33(1)(c). For that

reason, I dismiss the tenant's application for a monetary order for the cost of emergency repairs.

I find that the need for pest control does not fall within the definition of emergency repairs set out in Section 33(1). For that reason, I dismiss the tenant's application for an order that the landlord made emergency repairs.

The tenant also applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement. I cannot grant the tenant a monetary order for the \$250.00 cost of a new range hood and vent under this heading, because the landlord did not agree in advance that the tenant could make the repair and it is not an emergency repair as defined by the Act.

The tenant also claims for losses she suffered because she had to dispose of furniture and other possessions due to the cockroach infestation. I accept the evidence of the tenant that the landlord did not take appropriate continuing action to address the cockroach infestation. However the tenant did not provide photographs or other evidence to show why the items had to be disposed of, and the tenant did not provide evidence of the value of the items. For those reasons, I dismiss the tenant's application for a monetary order based on the loss of certain possessions.

The tenant also seeks a monetary order for the loss of quiet enjoyment. A tenant's right to quiet enjoyment of the rental unit is set out in Section 28 and clarified in Residential Tenancy Policy Guideline 6. Right to Quiet Enjoyment ("RTB Guideline 6").

I accept the tenant's evidence that she has been caused stress by the threat of eviction, but I cannot find anything malicious in the landlord's actions. The landlord has a valid reason for ending the tenancy, but used the wrong procedure perhaps because of her limited English. RTB Guideline 6 states at page 6-2 that for a tenant to prove that a landlord's actions breached her right to quiet enjoyment, "it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour". I find the evidence has not established that the landlord engaged in a course of repeated or persistent threatening or intimidating behaviour. For that reason, I dismiss the tenant's application for a monetary order for compensation for a breach of her right to quiet enjoyment.

I accept the evidence of both parties that the tenant was given use of the garage, but I find her tenancy agreement does not provide for exclusive possession of the garage. I find that the reference to "garage/workshop" in the tenancy agreement means shared use of the garage, because that is what the tenant was initially provided with. For that

reason, the tenant's application to suspend or set conditions on the landlord's right to enter the rental unit is dismissed.

Conclusion

I order that the Notice is cancelled. I order that the landlord take immediate steps to end the cockroach infestation of the rental unit. I dismiss the tenant's application for a monetary order. I dismiss the tenant's application for orders that the landlord make emergency repairs and to suspend or set conditions on the landlord's right to enter the rental unit.

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: April 03, 2014

Residential Tenancy Branch

