



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, LRE, LAT

Introduction

This is an application filed by the tenant for an order for the landlord to comply with the Act, Regulations or tenancy agreement, an order for the landlord to make repairs to the unit, site or property, to suspend or set conditions on the landlord's right to enter the rental unit and an order to authorize the tenant to change the locks to the rental unit.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the tenant entitled to an order for the above noted claims?

Background and Evidence

This tenancy began on June 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$375.00 based upon subsidized housing run by the landlord as a not for profit housing provider for this single room occupancy rental. A security deposit of \$434.50 was paid.

The tenant seeks an order for the landlord to comply with the Act, Regulations or tenancy agreement to set aside the landlord's security restriction that requires guests to sign in with photo identification during overnight hours. The tenant states that requiring guests to register with photo identification and to sign in during overnight hours has unreasonably restricted access to a person permitted on the residential property by the tenant. The tenant states that this violate her rights under Schedule 9 of the Regulations which state,

Occupants and guests

- 9 (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

The tenant states that the landlord's, "omnibus demand that guests show ID or report to a security company is a violation of the Residential Tenancy Act. The landlord disputes this stating that this rule is not an excessive requirement and that it is in keeping with general security practises in the area. The landlord stated that there are no posted security rules in the lobby of the building nor is there a requirement for this rule as a condition of the tenancy agreement.

The tenant seeks an order for the landlord to comply with the Act, Regulations or tenancy agreement by requiring 24 hours written notification to enter the rental unit. The tenant states that on two separate occasions the landlord has entered into her unit without proper written notice as required under section 29 of the Act. The tenant states that on June 4 and again on June 8, 2014 that upon returning home she noticed that several personal items in her rental unit were moved or disturbed while she was out. The tenant states that she filed a report dated June 4, 2014 with the landlord, which states, "management and/or maintenance person entered my apartment illegally when I was out! They used my bathroom put toilet paper roll in garbage after using my bathroom! They tossed used toilet roll into garbage!..." The tenant states that a police complaint was filed with the Vancouver Police and that the Police attended and investigated the complaint by checking for fingerprints. The tenant stated that no determination was found by the Police. The tenant states that as there was no forced entry that it had to have been the landlord's building manager or maintenance staff. The landlord disputes this stating that it is their policy not to enter the rental unit without first serving a 24 hour written notice or to obtain the permission of the tenant. The

landlord states that in assisting the police video footage was reviewed to show any persons attending on the same floor of the tenant's rental on the same date. The landlord states that the Police determined that there was no video footage showing anyone attending the tenant's rental unit door on June 4, 2014 and again on June 8, 2014 during the time period that the tenant was away from her unit.

The tenant seeks an order for repairs regarding completion of water leak repairs due to an emergency leak for the entryway ceiling, drywall behind the bathroom toilet and repair of the living room window which does not close. The tenant states that in February of 2014 a leak was detected and the landlord was notified where repairs were started. The tenant states that the repairs to the pipes were made, but that the walls repairs were not completed. The landlord confirms this in her testimony, but states that the rental property is currently awaiting the start of a complete re-pipe of the plumbing in the building and states that is only prudent to delay the wall repairs as it likely to have to be opened again for the re-pipe. The tenant also seeks to have the living room window repaired as it currently does not close as of May 2014. The landlord states that he was not made aware of this issue prior to the hearing, but will consent to have a repair person attend to inspect and repair if necessary. The tenant states that this action will satisfy her.

The tenant also seeks an order for the landlord to comply with the Act, Regulations or tenancy agreement to ensure the quiet enjoyment of the tenant by not being issued warning letters by the landlord concerning the tenancy. The tenant states that 2 warning letters were received accusing the tenant of assigning/subletting the rental unit without permission and 1 letter regarding the tenant's installation of a chain lock is a breach of her quiet enjoyment of the rental property. The landlord has provided evidence that they were responding to an allegation that the tenant was subletting her unit to G.O. from March to May of 2014. The tenant disputes this. The landlord has provided a copy of a written statement by G.O. dated May 20, 2014 which states, "I G.O. do say and affirm that I was a tenant in unit 316 from March to May 2014 at ...I was helping the tenant in 316 to pay her rent and I no longer am living in this unit." The tenant alleges that G.O. and her had an argument and that this person is making up these allegations. The landlord has provided a copy of a letter to the tenant dated June 6, 2014 which addresses the tenant's installation of chain lock which is contrary to term #20 of the signed tenancy agreement. The tenant was witnessed installing a chain lock on her door. The tenant was advised that written permission was required.

Analysis

I accept the evidence provided by both parties for this dispute. Section 6 of the Residential Tenancy Act states,

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The tenant is disputing that the landlord's rule of guest restrictions requiring photo identification and registering of guests during overnight hours are contrary to the Act, Regulations or the Tenancy Agreement. I find that this falls under section 6 (3) (b) and (c) of the Act.

Section 3 of the Regulations state that the definition of "unconscionable" to be,

Definition of "unconscionable"

3 For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

The landlord has confirmed that this security restriction is not a term of the tenancy agreement, nor is it a posted rule.

I find that this security restriction although prudent and may seem reasonable is unconscionable. It is not a term of the tenancy agreement agreed to in advance by both parties, nor is it a posted rule addressing a specific problem for the landlord for which the tenants have been duly notified. The tenant's application removing the restriction to

guests by reporting to security and providing photo identification is granted. The landlord is prohibited from requiring tenant's guests during the overnight hours to register with security with photo identification.

On the tenant's claim that the landlord is breaching the Act by entering the tenant's apartment without proper written notice on June 4 and June 8, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord or the landlord's agent breached the Act. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. This portion of the tenant's application is dismissed. However, the Act does still apply and the landlord must comply by providing proper notice and service of entry into the rental unit.

On the tenant's claim of repairs, I find that in a normal situation the tenant's claims of repairs for completion of the drywall and painting are justified, but that the landlord's delay in repairs is reasonable in waiting for re-pipe work to begin to justify the tenant's temporary inconvenience. However, as the tenant has suffered this inconvenience from February 2014 to the date of this hearing (5 months), I find this to be excessive. As such, if the landlord's re-pipe is not to begin within the next 2 months of the date of this hearing, I am ordering that the landlord to complete the necessary repairs for the drywall and painting of the walls.

The tenant is satisfied based upon the landlord's response to have an agent attend to inspect and repair if necessary the living room window.

I accept the evidence of both parties regarding the tenant's claims of a breach of quiet enjoyment and find that no breach has occurred. The landlord was responding to allegations of an illegal sublet and addressed it through a letter of correspondence based upon a witness statement of a third party. Although in dispute, this process of communication cannot be deemed excessive or intrusive. As well, I find that the landlord's response regarding the installation of a chain lock is reasonable in the circumstances as it was in the form of warning letter to clarify the situation with the tenant. The tenant admits to the installation of the chain lock and there is no dispute as to the section 20 of signed tenancy agreement contents regarding security. I find that these letters do not constitute a breach of quiet enjoyment, but are as stated warnings/cautions to address potential issues that may disrupt the tenancy. The tenant's application for an order to ensure the tenant's quiet enjoyment of the rental has not been established and is dismissed.

Conclusion

The tenant's application to remove the landlord's restriction of tenant's guests is granted. The tenant's application to complete repairs to walls is granted with the provision that if the landlord's re-pipe work is not to begin within 2 months of the date of the hearing that the wall repair work shall be completed forthwith. The remaining portions of the tenant's application are dismissed.

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 27, 2014

Residential Tenancy Branch

