



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OPL FF MNDC RR

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;
- b) To recover the filing fee for this application.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- d) A monetary order for \$3,600 to compensate her for disturbance of her daughter's and her peaceful enjoyment of their unit and for the repair of their washer and their moving expenses.

Service:

The Notice to End Tenancy is dated June 22, 2014 to be effective August 31, 2014 and the tenant confirmed it was served personally on her on June 22, 2014. The tenant filed her Application for Dispute Resolution on July 8, 2014. Both parties agreed they received personally each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and she is entitled to an Order of Possession or has the tenant entitled to any relief? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that the landlord failed to protect her peaceful enjoyment and is responsible for the repair of her washing machine? Has she also proved that the landlord should pay her moving expenses?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 16, 2014 on a month to month tenancy, rent on the tenancy agreement is \$700 a month and a security deposit of \$350 was paid in February 2014. However, the tenant withheld part of June 2014 rent and asked the landlord to apply the security deposit to rent for June 2014. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord testified that her mother-in-law is moving into the unit as she wants to be close to them, likes their location and has some health issues. A brother in law would likely share the suite too. The tenant requested to have the Notice cancelled for she said it did not make sense for the mother to move into her upstairs unit as she had some issues with her knees. She said she was living there already in the landlord's suite. She also noted that the brother in law is not part of the definition in section 49. The landlord pointed out a Notice to End her tenancy was given by the mother to her landlord in Vancouver effective August 31, 2014 and is provided in evidence. She said the mother is now sleeping on a mattress in their dining room while they await the outcome of the hearing. The parties agreed that the tenant had been given a free month's rent for August 2014 in accordance with sections 49 and 51 of the Act and she has not paid rent for September 2014 but is still living there.

The tenant is also claiming compensation for the landlord; she claims \$2,000 for loss of her reasonable enjoyment, \$1000 for her moving costs and the cost of fixing her washing machine (maybe about \$600. The tenant and her daughter gave evidence of problems caused by another person, M.L., whom they claim is a friend of the landlord and is employed by the landlord. They said he has a history of violent behaviour, has a bad temper and he has been harassing them by yelling at them and using foul language. They said he and the spouse of the landlord are friends and were standing talking and blocking their only exit when the 14 year old daughter came down the steps with the dogs and he gave her a dirty look. She felt so uncomfortable that she came back upstairs crying. They said they spoke to the landlord but she said he is not

employed by them and it is not their concern. The tenant said she does not feel she can live there anymore anyway.

The tenant states she has reported M.L.'s behaviour to the RCMP and also to the Ministry of Family Services as she saw him drinking and then riding off on his motorcycle with his 3 year old son, neither of them with helmets. She said it is an ongoing investigation and she has been interviewed by the Police and by the Ministry recently about M.L. and his behaviour. The landlord said they do not employ M.L. but he helped them spread some soil for he had a tractor and was using it on the house next door which is managed by his girlfriend. She said there appears to have been a long standing feud between M.L. and this tenant as she rented a home from his girlfriend's mother and the tenancy ended about two years ago. The landlord's spouse said they were not blocking the steps although M.L.'s vehicle was partially on their land as the driveway is narrow and they were cleaning up the common boundary. He said he has never heard M.L. yell at the daughter but he did hear him yell to the tenant to keep her dogs off the property next door which is managed by his girlfriend. He did not deny that M.L. comes around a lot but said he is helping his girlfriend and they are also cleaning up the boundary between the properties. The landlords said the RCMP told them that they were handling the matter between these parties and the landlords should not get involved. In a letter from M.L., he states the tenant has called the RCMP eight times, she did it to him during her previous tenancy and the police have found her complaints to be unfounded. He and his 70 year old mother are finding her behaviour very difficult to live with as he resides in the house across the road.

The tenant said another tenant broke her washing machine and offered to pay for it "if it was her fault". She said the other tenant had said the landlord could take it out of her security deposit. She explained the arrangement with her washing machine. She said the landlord offered to give her a \$50 rent reduction and free wifi for the use of her washer and dryer. However, another tenant used a heavy duvet or blanket in it and broke it. The repair person said it would cost more to fix it than the cost of a new machine as a bearing was gone. She said it was the responsibility of the landlord to fix her machine as it was being used by the other two tenants in the fourplex. The landlord has now put their own machines in the laundry room but she lost use of laundry for one week. The landlord notes the tenant's machines were used at her own request, they were paying for that usage and are not responsible for the repair. In the hearing, the landlord pointed out that there is no proof that another tenant broke the machine; it could have been the tenant herself. In an email on January 19, 2014, the landlord describes the unit and says shared laundry will be available once they put their washer/dryer in there; in reply, the tenant offers to share her washer/dryer "for a rent reduction". On February 3, 2014, the landlord states her rent will be \$650 a month until

the end of August 2014 due to ongoing renovations, then will be \$700 (and the lease addendum states that). The lease addendum also states that rent is \$700 a month 'in lieu of sharing tenant's washer and dryer'. In a letter dated January 22, 2014, the tenant states, "So the rent will be \$700 with the W/D to share in the building as well as Wi-Fi once it is installed". In a letter dated May 1, 2014, the tenant makes some complaints and states that she will let the issue of the cable go as the landlord's position is that they will only provide Wi-Fi for sharing her laundry machines. The landlord pays for the utilities for the laundry room.

Included with the evidence are the Notice to End Tenancy, the tenancy agreement, many emails between the parties, some letters from third parties and receipts.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord that they need the suite for the use of her spouse's mother who has some health issues and also wants to be close to them. The landlord's evidence is well supported by a copy of the mother's Notice to End Tenancy and the tenant's evidence that she is already sharing the landlord's suite. I find it credible that the landlord finds this arrangement very uncomfortable as the mother has no separate bedroom. The Application of the tenant to cancel the Notice to End Tenancy is dismissed. I find the landlord entitled to an Order of Possession which will be effective September 15, 2014 as requested by her.

In respect to the tenant's claim for compensation for disturbance of her peaceful enjoyment contrary to section 28 and for harassment, the onus is on her to prove on a balance of probabilities that the landlord through act or neglect caused this loss of peaceful enjoyment. I find insufficient evidence to support her claim. I find it credible that the landlord contacted the RCMP concerning the matter and was advised that it was under investigation and she should not interfere. I find from the tenant's testimony that there has been a long standing difference of opinion between her and M.L. and, while it is unfortunate that he lives across the road now and assists his girlfriend in managing the property next door, I find insufficient evidence that the landlord has employed him or that the landlord has allowed him to enter the property, or stare at this tenant or her daughter to harass the tenant. I find also both this matter and the matter of M.L.'s son is in the hands of the proper authorities. I find insufficient evidence that

the landlord has, through act or neglect, disturbed or allowed others to interfere with the tenant's privacy or peaceful enjoyment. Therefore, I dismiss this portion of her claim.

In respect to the claim for fixing the washer, I find the weight of the evidence is that the washer and dryer were always the property of the tenant and she exchanged the use of them for the provision of Wi-Fi 33 and a rent reduction. This evidence is supported by the emails and tenancy agreement. In effect, I find she was "renting" the washer and dryer to the landlord at her own request and was receiving compensation. Therefore, I find she is responsible for the repairs of units she was renting to the landlord. If someone else admits to breaking them and offers her compensation, it is up to her to collect from that person. The fact that this other person is a tenant does not obligate the landlord to collect compensation from her and in fact, as the landlord stated, there is insufficient evidence that this other tenant broke the washer. I dismiss this portion of the tenant's claim.

Conclusion:

I dismiss the tenant's Application in its entirety without leave to reapply. No filing fee was involved.

I find the landlord entitled to an Order of Possession effective September 15, 2014 and to recover the filing fee for this Application. A monetary order for \$50 is enclosed.

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 09, 2014

Residential Tenancy Branch

