Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LAT, O, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenants by posting on September 24, 2014. Further I find that the two Applications for Dispute Resolution/Notice of Hearing filed by the tenant were sufficiently served on the Landlord by mailing, by registered mail to the landlord's address for service. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated September 24, 2014?

b. Whether the tenant is entitled to an order to change the locks to the rental unit?

c. Whether the tenant is entitled to an order prohibiting the landlord from terminating the use of the parking place?

d. Whether the tenant is entitled to recover the cost of the filing fees in each of the applications?

Background and Evidence

The tenancy began on March 1, 2009. The present rent is $1861.11 plus $75 for parking payable in advance on the first day of each month. The tenant paid a security deposit of $737 at the start of the tenancy.

The tenant testified that the entire building was completely renovated in 2008/20099 just before they moved in. In March 2012 the then owner of the rental property started selling the apartments in the building. However, the second and third floor (which includes the tenant's apartment must stay rental units based on a covenant on title in favour of the City of Vancouver.

The rental unit which is the subject of this hearing was sold to the respondent in January 2014. The tenant testified they have encountered many problems with the landlord since the respondent took over.

The landlord has served 2 Two month Notices on the tenant. The landlord withdrew the first Two month Notice to End Tenancy. The second 2 month Notice to End Tenancy was set aside in a decision dated May 28, 2014. The relevant portion of that decision is as follows:

> "The landlord gave the following testimony:
>
> The landlord stated that she intends to conduct a complete renovation to the suite. The landlord is concerned that the unit might have water ingress, mold and structural wear due to it previously being a leaky condo. The landlord stated that she has extensive experience with leaky condos and the requirement to remedy all water issues. The landlord stated that the renovation will take 3-6 months to complete at a cost of approximately $15000.00. The landlord stated that she wishes to renovate both bathrooms with tile and shower insert, new kitchen cabinets, install hardwood floors and paint the suite. The landlord issued a Two Month Notice to End Tenancy for Landlords Use or Property on March 25, 2014 with an effective date of May 31, 2014.
>
> The tenant gave the following testimony:
>
> The tenant stated that the suite used to be a leaky condo but was fully renovated in 2009. The tenant stated that the unit is not high end but it's new and clean. The tenant stated that she will gladly accommodate the workman to allow her to

stay in the unit. The tenant stated that the landlord may have permits but doesn't require that the work be done. The tenant stated that the landlord has no proof of mold or water leaking into the unit and should be disregarded.

Analysis

Sections 49(6)(b) of the Act, pursuant to which the notice to end tenancy was issued, provide as follows:

> 49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
>
> > 49(6)(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

In respect to the renovations, the landlord must show that that (a) they have all the necessary permits and approvals required by law; (b) they intend in good faith to renovate; and (c) the intended renovations require the rental unit to be vacant.

I accept that the landlord has permits to conduct the work as claimed and that she intends to carry out that work. However, the landlord has not satisfied me that the unit need be vacant to conduct the work. The estimate provided by the inspector is $5800.00. The permits submitted by the landlord herself refer to cosmetic work. The landlord has failed to illustrate that the scope of work would require vacant possession as much of it is cosmetic with very little change to structure.

Based on the above and on the balance of probabilities, I am not satisfied that all of the proposed renovations cannot be accomplished while the tenant remains in the suite and as a result, the landlord's Notice to End for Landlord's Use of Property dated March 25, 2014 is cancelled**,** and is of no effect.

The landlord's Application for Review was dismissed.

Grounds for Termination:

The grounds set out in the one month Notice to End Tenancy are as follows:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or

more of the following applies:
…
(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The landlord testified that since she has become owner on January 21, 2014 she has been inside the apartment only on two occasions as follows:

- On March 24, 2014 with the City Inspector for a field review for the purpose of obtaining renovation permits
- On August 29, 2014 to obtain measurements for contractors.

The only time the tenant did not object to my entry into the unit was on March 24, 2014.

The landlord testified that when she gained access on March 24 she noted water stains on the living room ceiling, water pooling against the master bedroom wall from the outside patio, a filthy stained carpet and evidence of some black on the bathroom silicone. However when she gained access on August 29 she immediately became aware the entire apartment was cosmetically done, from complete carpet washing, to painted ceiling, and entire unit to silicone application. She submits the tenants have done this to prevent her from making the renovations she feels is necessary. She further testified the tenant agreed to work with her when the matter was discussed at the previous hearing

The tenant testified they had a meeting with the landlord in June to discuss the renovations. However, it quickly deteriorated into a meeting trying to determine when the tenants would leave the apartment. There was an exchange of e-mails where the tenants took the position that much of what the landlord proposed was not necessary. They further proposed that the landlord schedule some work to be done as soon as mid July. They further requested that the landlord schedule one thing at a time so that the whole apartment was not turned into a construction site. The landlord was unwilling or unable to start in July.

The tenant disputes the extent of the proposed renovations. She testified there is no need for the landlord to do much of what is proposed. She also testified that the proposed renovations goes way beyond what was anticipated by the arbitrator in the previous hearing.

During the last half of August there was an exchange of e-mails between the parties
The landlord testified the tenants have denied her entry

- On August 27, 2014 the landlord posted a Notice of Entry on the door for entry on August 29, 2014 for the purpose of measurements. The tenants e-mailed stating they do not permit my entry because they do not agree with the renovations. The landlord consulted the Residential Tenancy Branch and was told the tenant's presence was not necessary. On August 29, 2014 the landlord attended the rental unit in the absence of the tenants. The tenants responded with an e-mail accusing the landlord of looking into their personal things, of harassment and bullying.
- On September 5, 2014 and September 10, 2014 the landlord posted a Contractor's Notice and Notice to Enter for the landlord's entry on September 13, 2014. The purpose set out in the Notice was to remove the carpet in the master bedroom and inspect the underlying floor for possible damage from water ingress. It asks the tenants to remove furniture and personal belongings from the master bedroom to provide the contractor with access to carpeted area.
- On September 11, 2014 the landlord received an e-mail for the tenants forbidding her entry and threatening legal action. The landlord attended with her contractor on September 16, 2014. She was denied entry by the tenants and engaged in an angry encounter. The tenants' video taped the encounter. The police were called by both parties. The landlord who is 76 testified the tenants assaulted her.
- The parties exchanged e-mails. The tenants objected to the landlord's attempt to access the rental unit alleging the landlord has failed to provide them with the specifics of the renovation. The e-mail acknowledges that the landlord has a right to enter the apartment with a written notice, the purpose must be reasonable. The tenants submitted that as there was no water damage the purpose in this case was not reasonable. The e-mail continues by saying "We strongly believe that your intention is to start renovation (e.g. remove carpets) without finishing it within a reasonable time so that we will be forced to leave." landlord she attended at the rental unit. The tenants have demanded

the landlord produce a time line showing what she intends to do in the way of renovations and when she intends to complete this work.

- The landlord served a one month Notice to End Tenancy on September 24, 2014.
- The landlord complained of another incident which occurred in the middle of October in which the tenants and landlord were involved in a dispute over the scheduling of a visit from the owner and the City of Vancouver licence Inspector.

The landlord testified the tenants' refusal to give her access has resulted in increase cost. In particular she had to pay the contractor an additional sum and had to pay additional sum to renew the permits. However, the landlord failed to present evidence as to the amount of the additional costs.

Analysis:

This is a difficult case. The landlord submits the tenants have denied access to the rental unit which she is lawfully entitled to under section 29 of the Residential Tenancy Act and she has a right to end the tenancy under section 47(1)(d) of the Residential Tenancy Act. The tenant submit the purpose of the landlord's request for access is not reasonable as in essence the landlord is attempting to start a long 4 to 6 month renovation process that ultimately require the tenants to vacate the rental unit where the previous arbitrator determined the renovations were cosmetic in nature and vacant possession was not necessary. The tenant submits the landlord is attempting to do though section 29 what was denied to the landlord in the previous arbitration. In light of the previous arbitration the reason for entry are not reasonable.

Section 29 of the Residential Tenancy Act provides as follows:

> **Landlord's right to enter rental unit restricted**
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> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
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> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
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> (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:
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> (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).

I do not accept the submission of the tenants that the landlord must have the tenant's consent before the landlord is entitled to enter the rental unit. Section 29 of the Residential Tenancy Act provides that the permission of the tenants is only one of six reasons for the lawful entry into the rental unit.

Further, I am satisfied that Notice of Entry that occurred on August 29, 2014 was lawfully carried out. Proper notice was given. In such situations permission of the tenants is not necessary. The purpose for entering was reasonable in that it was limited. It may have been the first step of a long process but that does not give the tenant the right to refuse entry. Further, I am satisfied that the landlord's attempted entry on September 16, 2014 was lawful. The purpose of entry was set out and proper notice was given. It was limited in its purpose and would not have involved an excessive period of time. The tenants did not have a lawful right to stop entry. The landlord has a legal right to inspect to see whether there was water damage. The law does not require the landlord to rely on the representations of the tenant. The removal of the carpet was a reasonable purpose.

However, this does not resolve the dispute between the parties. The landlord was candid in her testimony stating that she intends to make extensive renovations that may last from 4 to 6 months. Similar evidence was presented by the landlord at the previous arbitration. However, the arbitrator set aside the 2 month Notice to End Tenancy and stated the following:

> "…However, the landlord has not satisfied me that the unit need be vacant to conduct the work. The estimate provided by the inspector is $5800.00. The permits submitted by the landlord herself refer to cosmetic work. The landlord has failed to illustrate that the scope of work would require vacant possession as much of it is cosmetic with very little change to structure.
>
> Based on the above and on the balance of probabilities, I am not satisfied that all of the proposed renovations cannot be accomplished while the tenant remains in the suite and as a result, the landlord's Notice to End for Landlord's Use of Property dated March 25, 2014 is cancelled**,** and is of no effect."

Both parties attempted to lead evidence as to what was discussed and what was said by the arbitrator said in previous hearing. Much of that evidence is in conflict. I determined it is not possible to give any weight to that evidence. I am limited in relying on what was said in the decision.

The grounds set out in the one month Notice to End Tenancy are as follows:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> …
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> > (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
> > (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

After carefully considering the disputed evidence of the parties I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- There is a legitimate dispute between the parties. Both sides have talked to information officer at the Residential Tenancy Branch and it would not be appropriate to end the tenancy in such a situation. While the dispute has been intense both sides acted in a manner to ensure it does not get out of hand (by calling the police).
- I determined the tenants were acting contrary to section 29 of the Act when they refused to give the landlord access in the middle of September and with their complaints about the landlord in conducting an inspection at the end of August. However, in the circumstances of this case I do not consider this amounts to a significant interference or unreasonable disturbance or that it seriously jeopardized the lawful right or interest of

the landlord. However, if the tenant continues to refuse access where the landlord has given proper notice of a reasonable purpose the result may be different.

- The landlord failed to prove the tenants assaulted her when she attempted to gain access the middle of September. While the landlord was correct in stating that the tenants did not have a lawful right to deny her entry, this does not mean that she can forcefully push her way into the rental unit.
- The landlord testified she has suffered a financial loss because the tenants denied her access. However, the landlord failed to present evidence to support this testimony. I determined the landlord failed to prove a financial loss or, if she suffered a financial loss, he loss was significant.
- The landlord stated that the renovations may last between 4 to 6 months. This is in start contrast to what the arbitrator in the previous arbitration has found about the scope of the intended renovations. In my view it is not appropriate for the landlord to use section 29 as a method to gain access for a renovation that will take 4 to 6 months.
- The tenants are cautioned to evaluate the reasonableness of a landlord's request for entry based on what is stated in the Notice rather than speculation about the intention of the landlord. The parties are encouraged to attempt to come to a common ground and work out a reasonable scheduled as to the scope and timing of the work to be done. If the parties are unable to work out their differences the parties are encouraged to file an Application for Dispute Resolution to have such a determination made rather than getting involved in an unpleasant and heated confrontation.

As a result I order that the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Whether the tenants are entitled to an order to change the locks to the rental unit?

The tenants seek an order for under section 31 of the Residential Tenancy Act that they be given permission to change the locks. This section provides as follows:

> **Prohibitions on changes to locks and other access**
>
> **31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

For the reasons set out above I determined the tenants were not acting lawfully when they disputed the landlord's access at the end of August and when they denied the landlord access the middle of September. The tenants have failed to prove that the landlord entered the rental unit without a lawful right to do so. I determined there was no basis for order changing the locks. Accordingly, this claim is dismissed.

Whether the tenants are entitled to an order prohibiting the landlord from terminating the use of the parking place they has used?

After carefully considering the disputed evidence of the parties I determined the tenants have failed to establish that they are entitled to the reinstatement of parking. Section 27 of the Residential Tenancy Act provides as follows:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Parking was not mentioned and is not among the services included in the rent as provided in the tenancy agreement. I determined the parking was paid separately and was not part of the tenancy agreement. Further, I do not accept the submission of that parking is essential to the tenant's use of the rental unit as living accommodation or that it is a material term of the tenancy agreement. The landlord gave the tenant 30 days written notice and has told the tenant not to pay the additional $75 parking charge. As a result I ordered that the claim to reinstate the parking be dismissed.

Conclusion

In summary I ordered that the Notice to End Tenancy be cancelled. I dismissed the tenant's application for an order to change the locks and to reinstate the parking. The tenant has been partially successful. I ordered the landlord(s) to pay to the tenant the sum of $50 for one of the filing fees such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 6, 2014

Residential Tenancy Branch