



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) for a monetary order in satisfaction of rental revenue loss for the month of May 2014 due to a claimed breach of Section 45(1) of the Act by the tenant. The parties agree the respondent tenant provided the landlord a letter on April 23, 2014 – which both parties view as the Tenant's Notice to end the tenancy. The landlord also sought compensation for loss in respect to changing the locks of the rental unit, and to recover the filing fee. The *style of cause* has been amended to reflect the complete rental unit address, as per tenancy agreement.

The tenant acknowledged receiving the application of the landlord. Both parties participated in the hearing with their submissions, relevant document evidence and relevant testimony during the hearing. Both parties acknowledged receiving the evidence of the other. The landlord and tenant were each given opportunity to settle their dispute to no avail. The parties were provided opportunity to be heard and orally provide relevant evidence, and were given opportunity to respond to it and to specific questions asked by the other party and the Arbitrator during the hearing. The landlord also presented a witness providing sworn testimony to the hearing, to which the tenant was permitted to respond and ask questions of the witness. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present. It must be noted that despite the abundance of evidence, only evidence relevant to the landlord's claim has been considered.

Issue(s) to be Decided

Is the tenant's Notice to end the tenancy valid?

Is the landlord entitled to compensation for loss of revenue?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

Relevant evidence of this matter is as follows. The tenancy of this matter is a *room* within a residential house also occupied by 2 other tenants under separate agreements: another female, and a male, also the son of the landlord. The undisputed testimony is that the tenancy started February 01, 2014 as a periodic month-to-month tenancy. Under the tenancy agreement rent in the amount of \$550.00 was payable in advance on the first day of each month. The tenant claims they vacated the rental unit April 27, 2014 - returning the keys to the other female tenant, whom subsequently returned them to the landlord April 30, 2014, when they vacated as well.

As submitted into evidence, the respondent tenant provided the landlord a letter on April 23, 2014 - dated April 22, 2014: the Tenant's Notice to end the tenancy. The respondent tenant testified the letter was co-written by herself and the other female tenant of the property as a joint letter to end both tenancies, although it is signed solely by the respondent. The letter notified the landlord they were ending the tenancy on April 30, 2014 due to a defining incident between the 3 tenants of the residential property one week prior on April 15, 2014 - which the 2 female tenants wrote left them feeling unsafe in the rental unit. The letter and the respondent's testimony described the incident as a lengthy "heated" argument lasting over an hour and an eventual assault of the respondent by the male tenant. The respondent claims the male tenant is the *landlord's property manager* and *an agent* of the landlord defined by his duties and his claimed authority over the residential property and his claimed authority to affect the respondent's tenancy, including his influence over the payable rent and his claimed authority to evict the respondent. The respondent provided evidence describing the claimed assault as the male tenant "grabbing" the respondent's arm "forcefully" and making effort to "push" the respondent out of the kitchen. In their letter the respondent stated the male tenant, "*slammed down his beer glass and came toward me aggressively in the kitchen, he grabbed my arm forcefully and tried to push me out of the kitchen, he yelled repeatedly for me to get out, to which I replied not to touch me.*" Again, the letter repeatedly references the male tenant as son of the landlord and *property manager* of the house; and, his "threats" and "intimidation" of the 2 females through his claimed authority as the *property manager*. The letter states that the 2 female tenants no longer feel safe in their rental unit for fear of repeated threatening conduct from the male tenant and their continued sharing of the house.

The respondent testified that following the argument of April 15, 2014 the male and second female tenants continued in a course of dispute. The respondent testified that they avoided the male tenant after April 15, 2014 and spent little time at the rental unit -

sleeping elsewhere until they vacated. The respondent testified they felt “shaken” for several weeks after the argument.

The respondent provided that in conjunction with the second female tenant they discussed the events of April 15, 2014 with the female *landlord*, whom the respondent claims spoke sympathetically about the assault and the worries expressed by the female tenants. The respondent testified the female landlord stated that if they felt unsafe in the house they could vacate early without obligation to satisfy future rent.

The female *landlord* testified that upon discussion with her husband, the landlords determined that the events of April 15, 2014, and the concerns of the female tenants, in their response, were “not reason enough to break (the) (tenancy) agreement” April 30, 2014. The landlord provided a response / letter to the 2 female tenants on April 24, 2014 outlining the landlord’s position to invoke the agreement to the end of May 2014, with an offer for the female tenants to each satisfying a portion of their respective rent of \$550.00 for May 2014, in the amount of \$367.00. If accepted, the landlords agreed to end the tenancy in April, and if declined would pursue full rent for May 2014 through Arbitration. The respondent testified they felt a significant breach of the tenancy agreement occurred in the April 15 incident. They felt their right to enjoyment of the rental unit was compromised by the conduct of the male tenant, whom in their experiences and the experience of April 15, 2014 they viewed as an extension of the landlord. The respondent provided that as a result they did not feel safe in the house and viewed the landlord’s offer as unfair remedy in light of what they experienced, and previously heard from the female landlord. The respondent declined the landlord’s offer and vacated April 27, 2014. Document evidence indicates the second female tenant occupied their unit to the end of that month.

The landlord testified that they originally represented their son and male tenant to the respondent as the person the respondent should look to in the event of a problem respecting the house, as he is skilled in repairs and hire him for maintenance of the house. The landlord also testified their son has resided in the house for some time and is responsible for placing advertisements for tenants and is permitted to screen and choose tenants, as “he is the one who will be living with them”. The landlord’s testimony downplayed their son as *property manager*, but that he clearly is an asset in overseeing the house. The landlord also provided that in their view the incident of April 15, 2014 was the result of ongoing relationship issues between all 3 tenants and the respondent was equally responsible in their behaviour and reactions in the situation, before and after the events of April 15, 2014. The landlord provided that events of the tenancy left all parties distressed but not deserving of “breaking” the tenancy agreement.

The landlord provided a witness: their son MR (the *male tenant*). MR was affirmed and provided testimony.

MR stated that he is not the property manager or landlord of the rental unit and thinks the respondent has “run away with that notion” or exaggerated his involvement in helping out his parents with tasks related to the care of the rental house, including accepting and taking rent cheques to his parents, and placing online listings for tenancies. He testified that on April 15, 2014 an argument with the 2 female tenants escalated and the respondent became very loud – standing up with arms out in an aggressive manner – shouting in his face. He also became loud toward her and grabbed her arm at her shoulder and told her to leave the kitchen, then “backed off”. MR testified that after a while they apologized to one another and that he apologized for his actions, and later communicated his apology by text. MR testified he does not believe he assaulted the respondent.

The respondent did not ask MR questions; however stated that MR has not apologized.

In respect to the landlord's monetary claim for 'locks' the landlord testified that due to the unreasonable and “escalating behaviour” of the 2 female tenants, and their access to their son's work area, it was their choice to re-key the locks of the residential property. The landlord testified it was, “necessary because of a breakdown in trust” and to guard from retaliation by the respondent. The landlord seeks for the 2 female tenants to compensate them for their cost of \$174.90, for which the landlord provided an invoice dated May 02, 2014 indicating service for 4 locks and for 12 keys. The respondent disputes the landlord's action was necessary.

Analysis

On preponderance of the relevant evidence in this matter, and on balance of probabilities, I have reached a Decision upon the following findings. It must be noted that in this type of application the burden of proof in support of their claims rests with the applicant; however, in this matter I also find the respondent has a burden to prove they gave the landlord a valid Notice to End the tenancy in accordance with the Act. The evidence is that the landlord solely recognizes the respondent's Notice to End as *late notice* contrary to Section 45(1) of the Act. I find that the respondent's Notice to End of April 22, 2014 effectively claims a breach of the covenant of quiet enjoyment is the intended breach of a material term of the tenancy agreement with the result that use of their rental unit was fatally compromised.

A full version of the following excerpts of the Act and policy guideline and may be accessed at, <http://www.gov.bc.ca/landlordtenant>.

Section 1 of the Act, *as relevant*, states as follows,

Definitions

1 In this Act

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Section 45 of the Act, *in relevant part*, states as follows,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the Act, states as follows,

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Residential Tenancy Policy Guideline 6. Right to Quiet Enjoyment, in relevant parts, states:

At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy.”

Every tenancy agreement contains an implied covenant of quiet enjoyment. . . . common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

Ending Tenancy for Breach of a Material Term

A breach of the covenant of quiet enjoyment has been found by the courts to be a breach of a material term of the tenancy agreement. A tenant may elect to treat the tenancy agreement as ended, however the tenant must first so notify the landlord in writing. The standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises. An award for damages may be more appropriate, depending on the circumstances.

I accept the landlord’s testimony respecting their son’s role and duties at the residential property, as well as the testimony of MR respecting his varying tasks, including placing online advertisements, screening/choosing renters, maintaining and repairing the residential property, and accepting rent cheques for the landlord. I find that MR’s role and duties come close to the definition of landlord, however do not sufficiently define him as a person who, *on behalf of the landlord (ii) exercises powers and performs*

duties under this Act, the tenancy agreement or a service agreement. However, on balance of probabilities I find that, intentionally or unintentionally, the landlord portrayed their son to the respondent as an extension of the landlord who enjoyed their trust. Therefore, I find it reasonable the respondent perceived MR as property manager, or an agent of the landlord.

As a result of all the above I find the respondent and MR agree, that with or without malice, the respondent was grabbed by the arm by MR during the argument of April 15, 2014. I find that, without using the word *assault*, MR's conduct was unwanted by the respondent and, MR clearly interfered with the respondent's person. I find, as a whole, all the events associated with the April 15, 2014 argument, were sufficiently traumatic to the respondent so as to significantly interfere negatively with her ongoing use of the rental unit. I find the covenant of quiet enjoyment was irreparably breached. I find the respondent gave the landlord written notice of the breach under **Section 45(3)** of the Act and was at liberty to end the tenancy thereafter, without the requirement of a tenant's Notice pursuant to Section 45(1). As a result of all the above, I find the respondent's Notice to end the tenancy valid and in compliance with **Section 52** [*form and content of notice to end tenancy*]. Therefore I must **dismiss** the landlord's claim of loss of revenue for May 2014.

In respect to the landlord's claim for locks, **Section 7** of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In order for the landlord to be granted compensation for loss, the test established by **Section 7** must be met in its entirety, as follows:

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement
3. Verification of the amount required to compensate for the claimed loss.

4. Proof that the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The landlord testified they chose to change the locks because of a lack of trust between the parties. While the landlord preferred this course under the circumstances, I find the landlord's reasons for changing the locks do not meet the test for compensation established by Section 7 of the *Act*. As a result, **I dismiss** this portion of the landlord's application, with the effect that the landlord's application **is dismissed** in its entirety.

Conclusion

The landlord's application **is dismissed** in its entirety.

This Decision is final and binding on both parties.

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: January 05, 2015

Residential Tenancy Branch

