



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Battye Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause.

Both tenants and an agent for the landlord company attended the hearing and one of the tenants and the landlord's agent gave affirmed testimony. The landlord also called 3 witnesses who also gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*, and specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 1, 2003 in this rental unit, and the tenants resided in another unit within the rental complex commencing in July, 2002. The tenants are still resident in this rental unit. Rent in the amount of \$684.00 per month is currently payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the tenants paid a security deposit in the amount of \$292.50 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that he personally served the tenants with a 1 Month Notice to End Tenancy on November 26, 2014 by handing it to one of the tenants, and the other tenant was present at the time. A copy of the notice has been

provided and it is dated November 26, 2014 and contains an effective date of vacancy of December 31, 2014. The reason for issuing the notice is:

- Tenant or a person permitted on the property by the tenant has or is likely to put the landlord's property at significant risk.

The landlord's agent testified that in October, 2012 the tenants were caretakers of the rental complex and were dismissed in January, 2014.

The tenants changed the locks to the rental unit without any permission from the landlord's agents. It's unclear when because whenever management would visit the building, the tenants would open the door with a master key so it went unnoticed. On October 6, 2014 a new caretaker of the landlord noticed it was an unusual lock, not standard for the building. The caretaker told the tenants to provide a key or change the lock back, but the tenants put it off and did nothing about it until the notice to end the tenancy was served. Then, it was replaced within 2 hours and the tenants provided a key, but the lock is still not keyed to the master, so if an emergency exists and the landlord's agents need to get in quickly, valuable time could be lost. The tenants have changed the lock twice, but have not returned it to the original. They told the landlord's agents about a break-in, that all that was missing was pain medication, and they changed it for their safety.

The landlord's agents met with the tenants after the notice was issued to see if the parties could reach a compromise, and offered to let the tenants stay until the end of June if they complied; sort of as a probationary period. However, the tenants had a case with the labour relations board at the time wherein they claimed they weren't paid for their employment and no compromise was reached. The labour relations matter was ultimately dismissed.

Since the new caretaker has taken over, the landlord's agent has been told that the tenants now have 5 cats.

A hearing had been conducted in March, 2014 between the tenants and the landlord company, but the landlord's agent did not attend the hearing and did not read the Decision resulting from that hearing until served with the tenants' evidence package which contains a copy. The landlord's agent discussed the matter with the Residential Tenancy Branch and was advised that there was no need to give notice in writing of the breach, and that information is corroborated by a publication of the Branch.

The landlord's agent also testified that there are 60 units in the rental building and caretakers can't protect the safety of tenants if tenants don't comply. The landlord is on a tight budget and is looking into re-keying the building, but it's a last resort, expensive and a long process. The landlord requests an Order of Possession.

The landlord's first witness (RK) testified that he was the property manager until June, 2014, and as such oversaw the building, dealt with the caretakers, gave them direction

on what was to be done, and was in constant contact with the tenants by phone or email when the tenants were the caretakers. The witness also visited the building occasionally without notice to them. The tenants were hired as caretakers in October, 2012 and one was given keys to the building and a master key. He was told not to give it to anyone and that it be in his possession only and never to leave his hands. The tenants were let go as employees in January, 2014.

The witness further testified that about 2 or 3 months after the tenants were hired, the tenant had mentioned that someone had gained entry into his rental unit and nothing was taken except pain killers, or that they had been moved around. The witness suggested that the tenant put up a camera, but is not certain if one was installed and does not know if the tenant reported it to the police. The witness did not know that the tenant had changed the locks to the rental unit, and never gave any permission to do so. The tenants were caretakers at the time, so there would be no reason for him to notice. He testified that there are different keys and locks and the landlord needs all of them to be keyed to the master so that the landlord's agents don't have to fumble looking for a key; it would be a nightmare if all are different.

The landlord's second witness (CC) testified that he is the current caretaker and has been since October 6, 2014, and have known the tenants on a personal basis.

When the witness noticed that the lock on the rental unit was not standard, he told the tenant that he needed a key. The request was repeated over a month on several occasions but the witness did not receive a key. The tenant asked the witness for one but the witness responded that since the tenant had changed it, the tenant could put it back. The witness notified that landlord's agent, and the tenant changed the lock back within 2 hours of being served with the notice to end tenancy, but it's not keyed to the master. There are 2 masters, the witness tried both, and neither worked.

The landlord's third witness testified that he is the property manager presently and has been since June 30, 2014. The witness did not ever give the tenants permission to change the locks to the rental unit.

The witness was present with the landlord's agent when the notice to end the tenancy was served on the tenant. The witness knocked on the door, the tenant answered, the parties shook hands and the landlord's agent handed the tenant the notice and explained the reason for issuing it. The landlord's agent was in the doorway and the witness remained in the hallway outside the rental unit. No inspection was completed, but the witness has been in the rental unit and it is well-kept.

The witness was also at the rental unit later to see if the lock was mastered, and told the tenants that it would be the responsibility of the landlord to approve a locksmith keying the lock to a master. He stated that there are 3 parts to mastering a key. First a locksmith would have to attend the building, get the owner's approval, and get the tenant's approval. The responsibility of payment for that service is with the tenants.

The tenant testified that the parties had been to Arbitration before the Residential Tenancy Branch in March, 2014. The tenant testified that the result was that the tenancy continues and that any communication between the parties was to be in writing. No issues arose and the tenants have done what they were asked to do. The landlord's agents never gave any written communication to the tenants about the lock until the notice to end the tenancy was issued. A copy of the Decision has been provided and it is dated March 11, 2014. It shows that the parties agreed to the outcome and the Decision further states: "Both parties were also encouraged to communicate in writing if issues arise during the tenancy." The notice to end the tenancy issued by the landlord, which was the subject of that hearing was withdrawn by the landlord and the tenancy continues until ended in accordance with the *Act*.

The tenant further testified that the tenants do not have a master and cannot re-key the lock to the master. Only the landlord can do that by removing it and taking it to a locksmith or by the tenants attending with the landlord to a locksmith to have it done, and the tenants agree to pay for it. The agent of the landlord company who was the tenants' boss at the time gave the tenants permission to change the lock when their unit was compromised. The tenants had rent cheques and laundry money of the landlord to protect, and in addition to their own safety, the tenants had multiple reasons to ask to change the lock. When the tenant handed over the keys and books to the new caretaker, he brought it up, but nothing in writing was given or received. The authorization to change the locks was given over the phone.

The tenant submits that the tenants have taken the necessary steps and went by what their boss told them. The only lock changed was on the rental unit door, not any in common areas. The tenants have never been given a notice for a breach for anything.

Analysis

Where a tenant disputes a notice to end a tenancy when given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and find that it is in the approved form and it contains information required by the *Act*. I have also reviewed the Decision of the Arbitrator, Residential Tenancy Branch dated March 11, 2014, and I find that the landlord's agents had an obligation to know what was going on. The landlord's agent who attended this hearing did not know prior to issuing the notice that the Arbitrator had encouraged the parties to communicate in writing if issues arose, and the tenant testified that permission to change the lock was granted by the tenants' then boss. That person did not attend the hearing or provide testimony. The parties agree that the tenants do not have the ability to re-key it to the master because it requires a landlord's approval. I am not satisfied in the evidence before me that the tenants have put the landlord's property at significant risk and I cancel the notice ending the tenancy.

The *Residential Tenancy Act* also permits me to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, and I find it necessary to order the tenants to pay for the cost associated with re-keying the lock to the master or a new lock keyed to a master in the possession of the landlord. I further order the tenants to avoid changing the locks again without the written consent of the landlord or the landlord's agents. Failing to comply with this order may result in an end to the tenancy for non-compliance with this order.

Conclusion

For the reasons set out above, I hereby cancel the 1 Month Notice to End Tenancy for Cause dated November 26, 2014 and the tenancy continues.

I further order the tenants to pay the cost associated with re-keying the lock on the rental unit to the landlord's master key, or a new lock keyed to a master in the possession of the landlord.

I further order the tenants to avoid changing the locks again without the written consent of the landlord or the landlord's agents. Failing to comply with this order may result in an end to the tenancy for non-compliance with this order

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 08, 2015

Residential Tenancy Branch

