Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS INTERNATIONAL MANAGEMENT
and [tenant name sup
pressed to protect privacy]

DECISION

Dispute Codes OLC, LAT, RR

Introduction

The tenant applies for an order that the landlord comply with the law and the tenancy agreement, for authorization to change the lock to her apartment and for a rent reduction.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there are grounds for granting any of the relief claimed?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy started in May or June 2014 when the tenant moved from another apartment in the building. The monthly rent is $650.00. The landlord holds a $375.00 security deposit and a $200.00 pet damage deposit.

The tenant claims that the landlord, through its agent, the building manager Mr. G.V. harassed her on January 16, 2015, by posting a notice to inspect her suite for bed bugs. She says she saw him do it and that another person saw him do it too. She says she found an equivalent notice on the door of her former suite as well.

The notices appear to be on the official letterhead of the landlord but are for an inspection that occurred the prior November. The landlord's representative Ms. C.T. denies that Mr. G.V. or anyone else associated with the landlord posted the notices.

The tenant testifies that sometime after January 16, 2015, Mr. G.V. has entered her suite in her absence without notice or permission and has put what looks like cooking grease into her bathroom sink. It plugged the sink. She says that Mr. G.V. also stole her plunger so she was unable to free the clogging.

The landlord's representative testifies that no such entry occurred and that, in fact, given the allegations and accusations the tenant has made in the past, Mr. G.V. will not enter the tenant's suite unless the tenant is home and unless he is accompanied by another person to serve as a witness.

The tenant testifies that on or about January 27, 2015, she has put in a request for repairs to the plumbing and her stove but they were not attended to.

Ms. C.T. for the landlord shows that the request was attended to almost immediately and that notice to enter with workmen to attend to the issues was given, but that the tenant wrote (and posted a note on her door) that she could not be home due to a dental appointment. Ms. C.T. filed a report from the attending electrical contractor (who was not cancelled in time by the landlord) saying he attended with Mr. G.V. at the tenant's front door, heard domestic noise and music inside, but the door went unanswered. To this the tenant produced a dentist's letter confirming her attendance.

The repair issues were apparently attended to on February 9, 2015.

The tenant complains that Mr. G.V. "ripped" a note or notes off the exterior her hallway door. I appears that at least one of the notes was addressed to Mr. G.V.. Mr. C.T. argues that the notes are inappropriate and contain abusive, profane and threatening language.

Though it is not clearly a part of her claim, the tenant relates a conptemporaneous incident in which she claims that she confronted Mr. G.V. about removing notes from her door while he was showing some prospective tenants an apartment. She says he laughed at her and used profane language and that he scared the prospective tenants off.

In response, the landlord produced a signed statement from the two prospective tenants, now actual tenants in the building, saying it was the tenant herself who was "yelling and swearing" at the manager and who warned them not to rent an apartment in the building.

In response to this evidence the tenant testified that the two new tenants were smoking marijuana all the time and that the male tenant is a bully.

Lastly, the tenant complains of an incident that occurred in the late evening of January 27, 2015,, the evening before this application was filed. She had been putting some garbage outside her door and accidentally locked herself out. She called the landlord's 24 hours service centre.but was told that a lock out was not an "emergency" and that the landlord's representative would not attend to let her in but to call a 24 hour locksmith.

The tenant called the fire department indicating that she thought she might have left a pot on the stove. On the presumption that there was a fire risk, the fire department attended and gained entry. It is agreed that the fireman who broke through the tenant's door discovered that the stove in the tenant's apartment was cold.

Ms. T.R., another tenant in the building, testified that she was present in the hallway that night and that the applicant tenant told her she was locked out and that she had left a pot on the stove. She describes the tenant as being frantic. Ms. T.R. says the tenant used her phone to call the landlord's 24 hour number and that she witnessed the call back the tenant received to indicate that Mr. G.V. would not come and let the tenant into the apartment. She also witnessed the subsequent call the tenant made to the fire department and witnessed a telephone call a fireman made to Mr. G.V

Ms. C.T. for the landlord intimates that there was never a fire risk. She says that the tenant did not report the pot on the stove when she first called in for aid. Ms. C.T. produced the statement of the call-in operator, an independent third party, who states there was no mention of a stove being turned on during the tenant's first call.

The tenant replied to this evidence that once the fireman had broken through her door she rushed to the stove and though the stove element was turned on, a fuse had blown and the stove was cold.

During the hearing the tenant referred to a number of other incidents not raised in the application particulars. She alleged that Mr. G.V. had been surreptitiously entering her suite when she was out and had poisoned and killed her first cat. She says that she has another cat now and that Mr. G.V. is trying to poison it as well. She says the cat has a broken tail and implies that has somehow been caused by Mr. G.V..

The landlord attempted to adduce letters from other occupants in the building complaining about the tenant. I determined that such evidence was in the nature of character evidence and declined to admit it.

Analysis

Regarding the bed bug notices, there is no evidence upon which I can reasonably conclude that the landlord or its manager Mr. G.V. had anything to do with the posting of the notices. They are long out of date and there would be no reason for the landlord to post them or even have them in its possession. I see no basis for granting any relief to the tenant for this item of the claim.

Similarly, there is no reasonable basis for me to conclude that Mr. G.V. snuck into the apartment and clogged the bathroom sink drain or took any plugs. I dismiss this item of the claim.

Regarding the alleged failure of the landlord to attend to repair of electrical and plumbing problems, the evidence appears to indicate otherwise. The landlord arranged immediately for work to be done and provided a notice. The fact that the work was not attended to immediately appears to be because the tenant insisted on being home for the work but was scheduled to be at the dentist's. There was some delay on the landlord's part in rescheduling after that but it was not so significant as to form the basis for any relief under this claim.

It should be noted that while the tenant is under the belief that Mr. G.V. is surreptitiously entering her suite while she is not there, there was no satisfactory evidence presented at this hearing to establish that allegation. The tenant refers to once having left baking soda on the floor at the entry and later discovering a footprint in it. In my view, that self-created evidence is not particularly corroborative of the tenant's allegation. In short, the tenant has not established a good reason for denying the landlord its statutory right to enter the premises for a reasonable purpose and on proper notice, whether the tenant decides to be there or not.

Of course this may change should the tenant find convincing proof of such conduct. If she does, then her proper remedy is to re-apply for a restriction on the landlord's right of entry.

In regard to the allegation that Mr. G.V. ripped notices off the tenant's door, I would point out that if the tenant places a notice on her door directed to the landlord, for

example, a note to say she's out until a certain hour, then Mr. G.V. is entitled to remove the notice. He has received it on behalf of the landlord and its continued presence on the door serves no purpose.

If the notice the tenant puts on her door is somehow vulgar, or defamatory of the landlord or anyone else, then, in my view, the landlord is entitled to remove it. The hallway is a common area and is the responsibility of the landlord, who is free to monitor and maintain a reasonable standard in that common area. In my view that includes the removal of offensive or derogatory material observable by others using that common area.

In regard to the subsequent altercation between the tenant and Mr. G.V. in the presence of two prospective tenants, in the face of the contrary written statement from those two people, the tenant has not satisfied the burden of proof on her to establish that the incident occurred as she has alleged.

In regard to the lock-out incident of January 27, 2015, I find that the tenant has not established that the landlord somehow failed in its duty to her. It is not argued that in a non-emergency situation the landlord was obliged to have Mr. G.V. attend in the late evening to let the tenant in. The tenant's allegation centres on the fact that the landlord's representative should have attended because it was an emergency; there may have been a pot heating on the stove, posing a fire risk to the entire building and its occupants.

On that point the tenant's evidence is too ambiguous to be convincing. In the materials filed February 3, 2015 in support of her claim, the tenant describes the incident saying that she "either never turned the stove on or I did n [*sic*] it shorted out …" At hearing, the tenant testified that once the fireman broke through her door she immediately went the stove and found that it was on but that it had shorted out. She indicated she arrived at the stove before the fireman and turned the cold stove off before the fireman made his way to it. Certainly on February 3rd she would have remembered whether the stove was on or off when she regained entry to her apartment that night.

This is an apparent contradiction in the tenant's evidence on a central point of her claim.

In any event accept the independent evidence of the call in center employee to the effect that the tenant didn't mention the stove being on when she first called. A reasonable person in the tenant's situation would have immediately mentioned that fact. I am lead to the conclusion that the possibility of the stove being on was most likely created by the tenant after the landlord's refusal to attend to let her into her apartment.

In summary, I find that it was reasonable for the landlord to conclude there was not an emergency situation at the tenant's apartment that night. The landlord was not acting contrary to the law or the tenancy agreement by failing to have someone to attend to let the tenant back in to her apartment.

Conclusion

I dismiss the tenant's application. There is no basis for a compliance order against the landlord. No grounds been shown to warrant restricting landlord access by a lock change on the tenant's apartment, nor has a basis been established to justify a rent reduction.

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: March 06, 2015

Residential Tenancy Branch