Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause and breach of a material term of the tenancy pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1135 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agents. The agents are employees of the corporate landlord.

Preliminary Issue – Service of Documents

The agent testified that the landlord served the tenant with the dispute resolution package on 4 March 2015 by registered mail. The landlord provided me with a Canada Post tracking that showed the mailing was returned to sender as the tenant failed to retrieve the mailing from the post office. The agent testified that these documents were sent by regular mail as well. Pursuant to section 90 of the Act, a document sent by registered mail is deemed received on the fifth day after its mailing. This presumption is a rebuttable presumption on receipt of sufficient evidence: see *Atchison v. British Columbia (Residential Tenancy Act, Dispute Resolution Officers)*, 2008 BCSC 1015. I was not provided with any evidence at the hearing that would rebut the presumption. On this basis, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act on 9 March 2015.

Similarly, the agent testified that the landlord served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 16 February 2015 by registered mail. The landlord

provided me with a Canada Post tracking number that showed the mailing was returned to sender as the tenant failed to retrieve the mailing from the post office. The agent testified that these documents were sent by regular mail as well. Pursuant to section 90 of the Act, a document sent by registered mail is deemed received on the fifth day after its mailing. I have not been provided with evidence why this presumption should be rebutted. On this basis, I am satisfied that the tenant was deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act on 21 February 2015.

The agent SN testified that he personally served the landlord's additional evidence and amended application to the tenant on 26 March 2015 at 1345. The landlord provided me with a witness statement that set out the same. On the basis of this evidence, I am satisfied that the tenant was served with the landlord's amended application and evidence pursuant to sections 88 and 89 of the Acton 26 March 2015.

The agent SN testified that the tenant told him last week that he intended to appear and contest the landlord's application.

Preliminary Issue – Landlord's Request to Amend Application

At the hearing the agent HD asked to amend the landlord's application to include a second invoice for changing stairwell locks in the common area of the strata building. HD testified that the second charge was incurred as a result of the tenant switching the locks in the stairwell after the locks had been fixed the first time.

I allowed this amendment—pursuant to paragraph 64(3)(c)—as the amended application was personally served on the tenant well in advance of this hearing and the landlord incurred this cost as a result of the tenant's course of continued conduct.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The tenant and landlord entered into a written tenancy agreement on 22 November 2014. This tenancy began on or about 1 December 2014. Monthly rent of $1,480.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of $740.00, which was collected on 17 November 2014.

On 16 February 2015, the landlords issued the 1 Month Notice to the tenants. The 1 Month Notice set out an effective date of 31 March 2015. The 1 Month Notice set out that it was given for two reasons:

- the tenant has caused extraordinary damage to the unit; and
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The agent testified that the tenant changed the locks on both the north and south stairwells of the floor on which the rental unit is situate. The strata received complaints from other occupants of that floor and arranged for the locks to be changed back. Sometime after the locks were changed back, the tenant changed the south-stairwell lock again. The strata arranged to change the lock back for a second time.

The agent testified that the tenant has installed crown mouldings in the rental unit without the landlord's consent.

The landlord provided me with an email dated 2 March 2015. This email was sent from the strata corporation to the landlord's agent. The email set out that the strata had been billed $352.73 by a locksmith and sought repayment of that amount from the landlord.

The landlord provided me with a letter dated 25 March 2015 from the strata corporation. That letter enclosed a locksmith invoice dated 3 March 2015. The invoice was in the amount of $115.50. The strata sought repayment of this invoice from the landlord.

The landlord provided me with a statement of account for the rental unit. That account set out two charges regarding locks:

Date	Item	Amount
2015-03-02	[locksmith company], locks/keys	$352.73
2015-03-25	[locksmith company]	115.50

The landlord seeks a total monetary order in the amount of $518.23:

Item	Amount
2 March Locksmith	$352.73
25 March Locksmith	115.50
Recovery of Filing Fee	50.00
Total Monetary Order Sought	**$518.23**

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Pursuant to paragraph 47(1)(f), a landlord may terminate a tenancy in cases where a tenant or person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. Paragraph 47(1)(h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

On 16 February 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant has caused extraordinary damage to the unit; and
- the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agents have provided uncontested and sworn testimony that the tenant has caused extraordinary damage in the following ways:

- repeatedly changing the locks to the common use stairwells; and
- changing the locks to the door of the rental unit; and
- installing crown mouldings in the rental unit.

The landlord's agents have provided uncontested and sworn testimony that the changed locks and the crown mouldings constitute a material breach of the tenancy agreement.

Pursuant to subsection 47(5) of the Act, a tenant is conclusively presumed to have accepted a tenancy ends where the tenant does not apply for dispute resolution within ten days of receiving the notice.

> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.

The tenant did not apply for dispute resolution within ten days of receiving the 1 Month Notice.

I do not consider that the conclusive presumption in subsection 47(5) would allow me to enforce a notice that was invalid on its face. While I am not convinced that the reasons for cause that the landlord has selected most readily encompass the problematic behavior of which the landlord complains, there is an arguable case to be made for either cause set out. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, that is, 31 March 2015. The landlords are entitled to an order of possession effective two days from service on the tenants.

Section 12 of the Act sets out that the "standard terms" are terms of every tenancy agreement. "Standard terms" is defined in section 1 of the Act:

> **"standard terms"** means the standard terms of a tenancy agreement prescribed in the regulations;

Subsection 13(1.1) of the *Residential Tenancy Regulation* (the Regulation) sets out that the terms established in the schedule are prescribed as the standard terms. Clause 10 of the Schedule to the Regulation establishes that a tenant must not change the locks or other means of access to a common area of a residential property unless the landlord consents to the change.

On the basis of the sworn and uncontested testimony of the landlord's agents, I find that the tenant breached a term of his tenancy agreement by changing the locks of the common area of the residential property without the landlord's consent.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act or tenancy agreement, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss.

The landlord provided me with the demand letters from the strata that set out the cost of replacing the locks that the tenant unlawfully changed. I find that the landlord incurred these costs as a result of the tenant's breach of the tenancy agreement. I find the landlord has proved its entitlement to the cost of the lock replacement.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $50.00 filing fee paid for this application.

The landlord is entitled to recover $518.23 from the tenant:

Item	**Amount**
2 March Locksmith	$352.73
25 March Locksmith	115.50
Recovery of Filing Fee	50.00
Total Monetary Award	**$518.23**

The agent testified that the landlord continued to hold the tenant's $740.00 security deposit, plus interest, paid on 17 November 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain $518.23 from the tenant's security deposit in satisfaction of the monetary award.

Conclusion

I order the landlord to recover the monetary award from the tenant by allowing the landlord to retain $518.23 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from $740.00 to $221.77.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 08, 2015

Residential Tenancy Branch