Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC O SS FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for Landlord's use and substitute service of documents. I dismiss the balance of the Tenant's claim with leave to re-apply.

At the outset of the hearing the Tenant argued that D.R., the person in attendance at this hearing, was not her Landlord and she refused to deal with him. She confirmed that both the Landlord and the Landlord's son had told her over the telephone that D.R. was managing their rental unit for the Landlord because the Landlord was living out of town. However, she argued that she does not have to deal with D.R. because she does not have anything in writing stating he was managing the rental unit or that she was deal with him.

D.R. submitted affirmed testimony that he is in attendance at the hearing in his capacity as the Landlord's agent. He stated that he has been hired by the Owner to manage the property and arrange maintenance and repairs. He confirmed that the Owner was sent the Tenant's application for Dispute Resolution to the address where the Owner currently resides in another Province. He asserted that the Owner contacted him and requested that he attend the hearing on the Owner's behalf.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the above, I find D.R. is Agent for the respondent to this dispute. I further find that as Agent, D.R. meets the definition of landlord, pursuant to section 1 of the Act, as listed above. Accordingly, D.R. will be referred to as Landlord for the remainder of this Decision.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 7, 2015 seeking to cancel a 2 Month Notice to end tenancy for landlord's use of the property, for substitute service, and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, hereinafter referred to as Landlord, and the Tenant. The undisputed evidence was that the Landlord has been ill and has had his son and his Agent conduct business as a landlord. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party gave affirmed testimony and the Landlord confirmed receipt of evidence served by the Tenant. At no time did the Tenant state that she needed to obtain an order to allow substitute service of documents. Therefore, as all documents had been received by the Landlord, I dismiss the Tenant's request for substitute service, without leave to reapply.

During the hearing each party was given the opportunity to provide their relevant evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued April 29, 2015 be upheld or cancelled?

Background and Evidence

The undisputed evidence was that the Tenant entered into a written month to month tenancy agreement that began on approximately August 1, 2010. Rent of $850.00 is due on or before the last day of each month and on approximately August 1, 2010, the Tenant paid $425.00 as the security deposit. The rental unit was described as being half of a duplex. The Owner owns both sides of the duplex and each side is rented to tenants under separate tenancy agreements.

The Landlord testified that he has been having difficulty with the Tenant when trying to gain access to the rental unit to conduct repairs. He argued that over the past five years the Tenant has reported repair issues and then refuses the Landlord access to enter

the rental unit with the contractors. He stated that the bathroom is in need of renovations and repairs and last October he requested entry so his son could review the required work. He said he asked the Tenant to contact him with a date and time that would be convenient for her and she never got back to him,

The Landlord asserted that the owner wants him to prepare the rental unit so it can be put up for sale. He said he is fed up with trying to get the Tenant's cooperation so he served her a 2 Month Notice to end tenancy for landlord's use, as per the copy of the Notice submitted in the Tenant's evidence.

The Landlord submitted that the 2 Month Notice was personally served to the Tenant on April 29, 2015 listing the following reason for ending the tenancy:

> *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The Landlord stated that the Notice served April 29, 2015 listed an effective date of July 1, 2015. After receiving the Notice the Tenant had a discussion with the Owner's son, requesting more time to find another place. The Owner agreed to allow the Tenant more time if she did not go to dispute resolution and issued a second 2 Month Notice in early May 2015 listing an effective date of August 31, 2015. The Landlord argued that the second Notice was no longer a consideration because they are now at dispute resolution.

The Landlord confirmed that they do not have permits in place to conduct renovations. He argued that they want to get inside the rental unit so they can determine the scope of work that is required. As a result, the Landlord could not provide evidence at this time of the scope of the planned renovations.

The Landlord asserted that he cannot simply post a notice of entry at the rental unit and enter to conduct the inspection because he does not have a key to the rental unit. He stated that when the locks were changed prior to the start of this tenancy the owner had a key but he has since lost it. The Landlord stated that he has asked the Tenant to get a copy of the key made for him and he would pay her for the key; however, she has refused to provide him with a key.

The Tenant testified that she finds the Landlord, D.R., intimidating, abrupt and scary and she does not want to have to deal with him. She stated that she is okay with other contractors coming into the rental unit but she does not want the Landlord in her place. She submitted that the rental unit lock was changed by the Owner when she first moved into the rental unit and she has not changed it since.

The Tenant admitted that the Landlord had wanted to renovate and repair her bathroom two weeks prior to Christmas. She said he asked her to use the bathroom in the other duplex while it was empty so they could do the renovations. She stated that it was not a

good time to do renovations at Christmas and said it would work better after the holidays.

The Tenant stated that she is disputing the eviction notice and argued that the Landlord can sell the place while she is still occupying the unit. She asserted that they want her to move out so they can patch some things up and then re-rent the unit at a much higher rent.

The Landlord confirmed that they asked to do the bathroom renovations just before Christmas because the other side of the duplex was empty at that time. They could not make the same arrangements for after Christmas because the other side of the duplex had been rented out for the beginning of January. They had tried to accommodate the Tenant by giving her access to the other bathroom so they could complete the required repairs but as usual she refused. So now they need to evict her so they can gain access to complete the repairs.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The Landlord served the Tenant the first 2 Months' Notice to end tenancy pursuant to section 49(6)(b) of the Act that states that 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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 53 (1) of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Upon review of the first 2 Month Notice dated April 29, 2015 listing an effective date of July 1, 2015, I find it was not issued in accordance with section 52 of the Act as it lists an incorrect effective date. The effective date automatically corrects to July 31, 2015, pursuant to section 53 of the Act, as listed above.

By his own submission, the Landlord has confirmed that they have not applied for permits to complete the renovations. In addition, the Landlord does not know what renovations are required because he has not gained access to the rental unit to determine the scope of the required work.

Based on the above, I find the Landlord has not met the burden to prove that at the time he served the Tenant with the 2 Month Notice they had the required permits. Furthermore, the Landlord has not proven the good faith requirement that the planned work requires the rental unit to be vacant. A Landlord cannot serve a tenant this type of 2 Month Notice on the grounds that a tenant does not let him gain access to the unit to conduct renovations. Accordingly, I grant the Tenant's application and cancel the 2 Month Notice to end tenancy issued April 29, 2015.

Residential Tenancy Policy Guideline 11 provides that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. Also, as a general rule it may be stated that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.

Based on the above, and in absence of sufficient evidence to prove the reasons for issuing the Notice, I find the second 2 Month Notice dated April 29, 2015, listing an effective date of August 31, 2015, is also cancelled and is of no force or effect.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

There was undeniable evidence that the relationship between the Tenant and this Landlord is at the very least contentious. There was also undisputed evidence that the Tenant has refused this Landlord access to the rental property.

As per the foregoing I feel it necessary to caution the Tenant that section 29 of the Act stipulates the rights of a landlord to enter a rental unit. Section 29 of the Act has been copied at the end of this Decision for each party to review. If a landlord serves a tenant proper notice of entry, in accordance with section 29 of the Act, a tenant cannot refuse a landlord entry.

Notwithstanding the Landlord's argument that the Owner lost his copy of the rental unit key, if the Tenant refuses to give the Landlord a copy of her key, there is nothing stopping the Landlord from serving the Tenant with proper notice of entry and arranging for a locksmith to attend the rental unit to either rekey the lock and give both the Landlord and Tenant a copy of the new key or cut a key for the Landlord with the current lock settings.

Conclusion

The Tenant has been successful with her application. Both 2 Month Notices dated April 29, 2015 are HEREBY CANCELLED and are of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenant may deduct the one time award of **$50.00** from her next rent payment, in full satisfaction of the recovery of her filing fee. In the event the Tenant's rent is paid directly to the Landlord or in some other fashion, the Tenant may request the Landlord pay her the $50.00 directly instead of deducting it from her next rent payment.

If the Landlord refuses to pay the Tenant the $50.00 the Tenant may serve the Landlord the enclosed Monetary Order for **$50.00**. This Order is legally binding and may be filed with the British Columbia Small Claims 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: June 23, 2015

Residential Tenancy Branch

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:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(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:

(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).