Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, CNC, RR, RP, PSF, OLC, MNDC, LRE, LAT, FF

Introduction
This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. The other was the tenants' applications for orders setting aside the notice to end tenancy; compelling the landlord to comply with the legislation or tenancy agreement, make repairs to the rental unit and provide services or facilities required by law; limiting the landlord's right of entry; allowing the tenants to change the locks; reducing the rent for repairs, services or facilities agreement upon but not provided; and a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Should a repair order be made and, if so, on what terms?
- Should limitations on the landlord's right of entry be made and, if so, on what terms?
- Should the tenants be allowed to change the locks on the rental unit?
- Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence
This month-to-month tenancy commenced November 1, 2014. The monthly rent of $700.00 is due on the last day of the preceding month. The tenants paid a security deposit of $350.00. The rental unit is a suite in the lower level of a house. The landlord and his family live upstairs. There is a second rental unit on the lower level, occupied by a student.

At the beginning of the tenancy a couple of minor maintenance issues were raised by the tenants. They were dealt with by the landlord.

The tenants went away for a few days to the USA at the end of March. Before leaving the tenants changed the lock on the rental unit without notifying the landlord or asking his permission in advance. The tenants say they changed the locks before they left because based on their experience with the landlord not being accommodating on noise and repair issues they were afraid that some previous tenant might come back exact some sort of revenge on this rental unit. When asked what led them to this conclusion the tenants related a conversation with the female tenant that occurred after their return from this trip. The tenants' testimony is that it was their intention to change the lock back upon their return home.

The landlord testified that he changed the lock prior to the start of this tenancy and if the tenants would have expressed any concern he would have changed it again.

The tenants did not pay the April rent before they left.

The tenants testified that because of a credit card issue they did not have cell phone serve while they were in the USA.

The landlord testified that he is a firefighter and his unit frequently responds to calls where a person is found dead, injured or ill and unattended in their home. He also said that about twelve years ago he had a tenant who died in the rental unit.

The landlord testified that until this point in time the tenants had been “awesome” about paying their rent so he was surprised when April 1 came and the rent was not paid. He saw that the female tenant’s motor vehicle was parked and he had not seen the male tenant or the male tenant’s motor vehicle around. He said he called, texted and e-mails the tenants but received no response. He knocked on the door of the rental unit and got no response. Finally, he tried the lock and discovered that it had been changed. He was very upset and on April 3 sent the tenants a text message that said: “I noticed you changed the locks. Hmm mm. Not to worry though I’ll get in if I need to.”

The tenants returned home late on the night of April 5 and paid the rent.

The tenants were very upset that the landlord had tried to access their suite and decided not to change the lock back. The landlord was very upset that the tenants had been late with the rent and had changed the lock.

The landlord decided to conduct an inspection of the rental unit. There followed a series of notices where the landlord attempted to comply with the legislation and the tenants attempted to hold him to the letter of the law.

Finally on April 16 the landlord got into the rental unit. Although he arrived after the time he had specified on the notice of entry the tenants let him into the unit.

The landlord testified that he was taken aback at the volume of boxes and items in the unit. In addition to boxes in the hallway and main areas of the unit the second bedroom is completely full of boxes. As a firefighter he was very concerned about fuel load. He tried to take photographs of the interior of the unit by the tenants objected to him doing so; they did record their conversation with the landlord.

There was an argument and the landlord left the rental unit. He has not attempted an inspection since.

The tenants testified that they had explained to the landlord at the start of the tenancy that they were downsizing from two previous homes and were renting this unit until they found a suitable home to purchase. Their position is that what they put in their personal space is their business; the landlord is not entitled to take photographs of their personal belongings; and he has never explained anything about fuel load.

The landlord testified that it appears to him that the tenants are using the rental unit as a storage unit. He says the volume of boxes and material in the unit means that a first responder could not move around the unit and that the volume of material creates a greater fire hazard for his family.

On April 24 the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reasons stated on the notice are:

- Tenant is repeatedly late paying rent.
- Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and/or put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The tenants filed their application disputing the notice on May 8, 2015.

The tenants' claim compensation for a breach of their right to quiet enjoyment. Their principal complaint is that the noise from the landlord's unit continues until after 11:00 pm most nights. The male tenant works a long shift and has to get up early so being able to sleep is important. The bedroom that the tenants sleep in is directly below the kitchen /dining area of the landlord's unit. This area has tile floors.

The tenants say the noise is beyond that of ordinary household noise; it's furniture being moved, stomping, the slamming of the kitchen door, etc. The tenants say they raised this issue with the landlord several times but in the end he just told them that they would have to learn to live with it.

The landlord says the house is twelve years old and there is not good sound proofing between the three living units in the house. He says all three units can hear each other's televisions, footsteps, etc.

They have three children: an 18 year old girl with special needs; a girl in grade ten; and a girl in grade six. The girls are active in school and sports and he works shift work. With the exception of a card party on December 26th, they never host parties or family events at their home. After the girls go to bed, he and his wife watch television and visit in this area before they go to bed.

The landlord testified that when the tenants first complained about noise he put felt on the bottom of all the furniture to reduce the noise.

On May 4 the tenant notified the landlord by e-mail and in person that the washing machine in their unit was not working. The landlord responded that there was a leak and he had shut off the water to present further damage. He told the tenant that he was calling a repairman. The landlord testified that the repairman was not able to come until Monday, May 11. Both parties testified that the washing machine was working by the evening of May 11.

The tenants claim $71.00 as compensation for the loss of use of the laundry equipment for two weekends. This is calculated as three loads/weekend at $5.00/load to wash and dry, times two weekends, plus four hours of time @$10.25/hour.

The tenant also related a series of conversation and events that led her to believe the landlord had deliberately turned the water off in order to pressure them to move out.

The tenants paid the May and June rent. The landlord accepted the rent. Because the tenants paid by cheque he did not give them a receipt for the payments.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Is the landlord entitled to an order of possession and, if so, on what terms?

The 1 Month Notice to End Tenancy for Cause was posted on April 24, 2015. Pursuant to section 90 of the *Residential Tenancy Act* it is deemed delivered to the tenants on April 27. Section 47(4) provides that a tenant may dispute the notice by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenants had until May 7 to file their application for dispute resolution. They did not file their application until May 8. Pursuant to section 47(5) the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, which pursuant to section sections 47(2) and 53(1) is May 30, 2015.

However, the landlord accepted payment for the June rent. While the *Act* does not require landlords to provide receipts for rent payment made by cheque there are special circumstances attached to rent payments made and accepted after the effective date of a notice to end tenancy.

Where a landlord accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy. When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy."

The usual means of doing this is by giving the tenant a receipt that states the rent is accepted "for use and occupancy only".

By accepting the June rent without making specifying that it was being accepted for use and occupancy only the landlord has reinstated the tenancy. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

Should a repair order be made and, if so, on what terms?

The landlord is ordered to have the stove inspected by a qualified technician within fifteen days of receiving this decision and to implement the recommendations of the technician. The landlord is also ordered to provide the tenants with a copy of the technician's report.

The evidence does not establish that the black marks on the refrigerator seal represent any health risk (not all black marks in photographs are dangerous mold) or interfere with the operation of the refrigerator. No order will be made regarding the refrigerator.

Should limitations on the landlord's right of entry be made and, if so, on what terms?
Should the tenants be allowed to change the locks on the rental unit?

Section 31(3) states that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing or an arbitrator has ordered the change. The tenants offered some after-the-fact justification for having changed the lock but they had no legal right to change the lock when they did.

As explained in *Residential Tenancy Policy Guideline 7: Locks and Access*, where a tenant can prove that the landlord entered contrary to the legislation the tenant may apply to have the locks to the rental unit changed.

The evidence is that the landlord made one attempt to enter the rental unit, after the rent was unpaid and there had been no sign of the tenants for several days. There has been no attempt by the landlord to enter the rental unit without serving a notice of entry before or after that one occasion.

The fact is that if the landlord had posted a notice of entry he could have legally entered the rental unit on the fourth day after it was posted whether the tenants were home or not; whether they had knowledge of the notice of entry or not; and whether they had given consent or not.

One attempt is not sufficient grounds to justify an order allowing the tenants to change the locks.

The tenants are ordered to put the original lock back or to provide a key for the new lock to the landlord within three day of receiving this decision. The tenants' claim for an order allowing them to change the lock on the rental unit is dismissed, as is their claim reimbursement for the new lock.

Section 29(2) states that a landlord may inspect a rental unit monthly. These inspections are in addition to any entry that may be made for the purpose of repairs or other purpose permitted by the legislation. A landlord must give proper notice before conducting any inspection. An inspection means that the landlord may access all the rooms of the unit – not just look through the doorway.

Regarding the taking of photographs in the rental unit, a landlord has the same legal right to take photographs of the rental unit for the purposes of presenting evidence at a dispute resolution hearing as a tenant has to record all of their conversations with the landlord for the same purpose.

Are the tenants entitled to a monetary order and, if so, in what amount?
The tenants' claim for the anticipated costs of moving is dismissed. If a notice to end tenancy is upheld, the tenants must bear their own costs of moving because the tenancy is ending as result of their wrongdoing. If a notice to end tenancy is set aside the tenancy continues. If the tenants subsequently give notice and move out of the rental unit that is their choice and the tenants must bear the cost of moving. Either way, the tenants are not entitled to compensation from the landlord for this cost.

The tenants' claims for reimbursement for the small appliances are dismissed. The tenants should have applied to the Residential Tenancy Branch for a repair order if the stove was not working properly before incurring these costs.

The law relating to a tenant's right to quiet enjoyment is summarized in *Residential Tenancy Branch Policy Guideline 6: Right to Quiet Enjoyment*. The right to quiet enjoyment means that a tenant is protected from substantial interference with the enjoyment of the premises for all usual purposes. One of the ways in which the tenant's right to quiet enjoyment may be breached is unreasonable and ongoing noise.

The tenants' monetary claim is calculated as one hour/night for sixteen work nights/month. The evidence really only establishes that the landlords and the tenants have slightly different schedules and routines; it does not establish a pattern of unreasonable and ongoing noise. This claim is dismissed.

Regarding the tenants' claim for lack of laundry services as s explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:*

> "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances.

> A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

The tenants' calculation of the loss incurred by the lack of laundry facilities is reasonable. Accordingly, the tenants are awarded the sum of $71.00.

As neither party was particularly successful on their application no order will be made regarding the filing fee paid by both parties.

Conclusion

a. The tenancy is continued, for the reasons set out above.
b. The tenants are ordered to put the original lock back or to provide a key for the new lock to the landlord within three day of receiving this decision.
c. The landlord is ordered to have the stove inspected by a qualified technician within fifteen days of receiving this decision and to implement the recommendations of the technician. The landlord is also ordered to provide the tenants with a copy of the technician's report.
d. The tenants are awarded the sum of $71.00 for lack of laundry services. Pursuant to section 72(2) this amount may be deducted from the next rent payment due to the landlord.
e. All other claims by both parties are dismissed.

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 15, 2015

Residential Tenancy Branch