Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ET

Introduction

The hearing on October 20, 2015 was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and an early end to the tenancy. The hearing on October 20, 2015 was adjourned for reasons outlined in my interim decision of October 20, 2015.

At the hearing on October 20, 2015 and in my interim decision of October 20, 2015 the Landlord and the Tenant were advised that the hearing would be reconvened on October 30, 2015 at 10:30 a.m. The parties were advised to dial into the teleconference at 10:30 a.m. on October 30, 2015 using the same telephone number and pass codes used to join the teleconference on October 20, 2015.

The hearing was reconvened on October 30, 2015 and was concluded on that date.

At the hearing on October 20, 2015 the Landlord stated that the evidence package submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were also placed in the Tenant's mail box on September 21, 2015. The Tenant stated that he did not receive these documents until October 19, 2015 for reasons outlined in my interim decision of October 20, 2015.

The Tenant stated that when he received the Landlord's evidence package on October 19, 2015 he only received exhibits 1A, 1B, 1C, and 2.

As I had insufficient information to determine whether the Landlord was correct when she stated the Tenant was served with a complete copy of the evidence package the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution or the Tenant was correct when he stated he only received some of the documents, I provided the Landlord with the opportunity to re-serve that evidence package to the Tenant.

At the hearing on October 20, 2015 the Landlord and the Tenant agreed to meet at 3:00 p.m. on October 23, 2015 for the purpose of re-serving the Landlord's evidence package. At the hearing on October 30, 2015 the Tenant acknowledged receiving these documents.

Both parties were represented at both hearings. They were given the opportunity to present relevant oral evidence, ask relevant questions, and make relevant submissions.

Preliminary Matter #1

At the outset of the hearing on October 30, 2015 the Landlord stated that other than the evidence package that was re-served to the Tenant on October 20, 2015, no other documents were submitted to the Residential Tenancy Branch or served to the Tenant.

During the hearing the Landlord stated that on October 23, 2015 the Landlord sent a copy of a One Month Notice to End Tenancy to the Residential Tenancy Branch, via registered mail. That document was not available to me at the time of the hearing nor was it located after the hearing concluded.

The Landlord stated that at the conclusion of the hearing on October 20, 2015 I directed her to submit a copy of the One Month Notice to End Tenancy. That is not my recollection nor were those directions provided in my interim decision. I do recall advising the Landlord that she has the right to file another Application for Dispute Resolution for an Order of Possession on the basis of that Notice to End Tenancy, which may have been misunderstood as direction to submit a copy of the One Month Notice to End Tenancy.

The Landlord stated that the One Month Notice to End Tenancy was served to the Tenant with the evidence package served to him on October 23, 2015. The Tenant stated that the One Month Notice to End Tenancy was received with the evidence package he received on October 23, 2015.

I decline to accept the One Month Notice to End Tenancy as evidence for these proceedings for the following reasons:

- the proceedings had already commenced by the time this document was submitted to the Residential Tenancy Branch;
- I did not have the document in my possession; and
- the parties were able to consent to the content of the Notice to End Tenancy, so it was not necessary for me to physically view the document.

The Landlord and the Tenant agree that the One Month Notice to End Tenancy was signed by the Landlord; was dated August 23, 2015; and declared that the Tenant must vacate the rental unit by September 30, 2015.

Preliminary Matter #2

At the outset of the hearing on October 30, 2015 the Tenant stated that he has not submitted any evidence to the Residential Tenancy Branch in regards to this matter.

After the hearing concluded on October 30, 2015 I located a two page written submission that was submitted to the Residential Tenancy Branch on October 23, 2015.

As these documents were not introduced at the hearing on October 30, 2015 and I was, therefore, unable to establish that they had been served to the Landlord, they were not considered as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to end this tenancy early, pursuant to section 56 of the *Residential Tenancy Act (Act)?*

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2006 or 2007 and that the Tenant is currently required to pay monthly rent of $570.00 by the first day of each month.

The Landlord stated that she wishes to end this tenancy early, in part, because the Tenant is growing marijuana in the bedroom of the rental unit. In support of this reason to end the tenancy the Landlord stated that:

- on August 22, 2015 she and the Agent for the Landlord observed 8 marijuana plants growing, in pots, in the bedroom;
- on August 22, 2015 she and the Agent for the Landlord noted that the bedroom furniture had been moved from the bedroom to the living room;
- on August 22, 2015 the Landlord told the Tenant to remove the plants;
- the Tenant told her she would not move the plants;
- on August 23, 2015 the Landlord placed a letter in the Tenant's mail box, in which the Landlord informed the Tenant he must remove the marijuana plants; and
- she does not believe the marijuana plants have been removed.

In response to the allegation of growing marijuana, the Tenant stated that:

- he has never grown marijuana in the rental unit;
- the Landlord could not have entered his bedroom on August 22, 2015, as his bedroom door was locked;
- he keeps his bedroom door locked because he does not want the Landlord, who is his mother, to enter his bedroom;
- he has moved his bedroom furniture to the living room as he prefers to watch television from a bed in the living room; and
- he did not receive the letter the Landlord allegedly placed in his mail box on August 23, 2015 until he received it as evidence for these proceedings.

The Landlord submitted a consumption graph that the Landlord contends represents hydro consumption at the rental unit between August 09, 2015 and September 27, 2015. The Tenant stated that the hydro consumption rose during this period because the Landlord gave him an ionizer and an air conditioner. The Agent for the Landlord stated that the ionizer and the air conditioner were given to the Tenant on July 07, 2015, so those items would not account for the increased consumption in August.

The Landlord submitted a series of text messages that were exchanged between the parties. Although the text messages are not dated, the Agent for the Landlord stated they were exchanged on August 24, 2015.

In this series of text messages the Landlord wrote, in part:

- even if the tenant gets a "legal grow license" he is not permitted to change the use of the apartment;
- the Tenant can stay if he "stop this behaviour";
- the Tenant's behaviour is putting the Landlord at risk for "thousands in damage"; and
- an "eviction notice" has been "legally delivered" to his mailbox.

In this series of text messages the Tenant wrote, in part:

- he is "not changing anything";
- to stop harassing him;
- he would like to see the Landlord prove anything; and
- the Landlord is welcome to inspect the unit again in six months.

The Tenant stated that some of the text messages in this series are missing and that the text messages are, therefore, taken out of context. He said that the reference to "not changing anything" relates to his refusal to move his bedroom furniture from the living room to the bedroom.

The Landlord stated that there is a need to end this tenancy immediately because the neighbours have complained about the smell of marijuana and the strata council has informed her there is evidence of mould in the area of the rental unit.

The Agent for the Landlord stated that there is a need to end this tenancy immediately because the use of "high voltage electricity" poses a serious fire hazard and the presence of a "grow op" invalidates their insurance.

The Landlord stated that she wishes to end this tenancy early, in part, because the Tenant changed the lock to the front door of the rental unit. In support of this reason to end the tenancy the Landlord stated that she discovered the lock was changed on August 25, 2015 when they returned to the rental unit to check on the status of the marijuana plants. I note that in the Landlord's written submission she declared that she discovered the locks had been changed on September 19, 2015.

The Tenant stated that he changed the lock to the front door of his rental unit on, or about, October 02, 2015. He stated that:

- he changed the lock because the lock on the door stopped working;
- he told the Landlord, on multiple occasions, that the lock was broken;
- he eventually changed the locks at his own expense because he did not want to leave the rental unit insecure;
- that he did not have authority from the Landlord to change the lock to the front door;
- that he did not have authority from the Residential Tenancy Branch to change the lock to the front door; and
- he did not give the Landlord a key to the new lock.

The Landlord submitted a series of text messages that were exchanged between the parties. Although the text messages are not dated, the Agent for the Landlord stated they were exchanged on August 25, 2015. In this series of text messages the Landlord wrote, in part:

- they had been told the Tenant intended to change the locks on Wednesday;
- it is not necessary to change the locks; and
- the Tenant is not allowed to change the locks.

The Tenant stated that he does not know when this series of text messages were exchanged. In this series of text messages the Tenant wrote, in part, that he believed he had the right to change the locks if there has been an "illegal entry" and it was necessary to protect his privacy. He stated that this series of text messages referred to the lock on his bedroom door, not the lock on the front door of the rental unit.

The Landlord stated that on August 23, 2015 a One Month Notice to End Tenancy for Cause, which was dated August 23, 2015, was placed in the Tenant's mail box. The Landlord stated that this One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by September 30, 2015. The Agent for the Landlord stated that the Landlord has not yet filed an Application for Dispute Resolution seeking an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause.

The Tenant stated that he never located the One Month Notice to End Tenancy for Cause, dated August 23, 2015, in his mail box. He stated that he did not receive this Notice to End Tenancy until it was personally served to him by the Landlord on October 23, 2015.

Analysis

Section 56(1) of the *Act* stipulates that a landlord can apply for an order that ends the tenancy on a date that is earlier than the tenancy would end if a notice to end tenancy were given under section 47 of the *Act* and that the landlord may apply for an Order of Possession for the rental unit.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

Section 56(2)(b) of the *Act* authorizes me to grant an Order of Possession in these circumstances only if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 to take effect.

Even if I were to find that the Tenant was growing eight marijuana plants in his bedroom and that this was grounds to end this tenancy in accordance with section 47 of the *Act*, I find there is insufficient evidence to establish that it would be unreasonable for the Landlord to end this tenancy in accordance with section 47 of the *Act*.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect I was influenced, in part, by the absence of photographs that might cause me to conclude that the manner in which the plants are being grown places the rental unit at imminent risk. It is not uncommon for people to have 8 houseplants in their home without posing any significant health risk.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect, I placed no weight on the Landlord's testimony that neighbours have complained about the smell of marijuana. Even if this is grounds to end the tenancy pursuant to section 47 of the *Act*, I do not find that any disturbance relating to the smell of marijuana is not significant enough to end the tenancy without proper notice.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect, I placed no weight on the Landlord's testimony that the strata corporation has informed her there is evidence of mould in the area of the rental unit. Even if the Tenant has contributed to the mould and the Landlord has grounds to end the tenancy as a result of mould, I do not find that the delay of providing proper notice, pursuant to section 47 of the *Act*, would significantly contribute to the problem with mould.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect, I placed no weight on the Agent for the Landlord's submission that the use of "high voltage electricity" poses a serious fire hazard. Although the Landlord has submitted evidence of increase hydro consumption in the rental unit, the Landlord has submitted no evidence, such as evidence from a fire inspector or building inspector, which establishes the wiring in the rental unit has been altered.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect, I placed no weight on the Agent for the Landlord's submission

that the presence of a “grow op” invalidates their insurance. The Landlord has not submitted any evidence to establish that their insurance policy is invalid if a tenant grows 8 marijuana plants in the rental unit.

Section 31(3) of the *Act* stipulates that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees to the change, in writing, or the director has ordered that the locks may be changed. On the basis of the undisputed evidence, I find that the Tenant breached section 31(3) of the *Act* when he changed the lock to the front door of the rental unit without authority from the Landlord or the Residential Tenancy Branch.

I find the testimony of the Landlord, who stated that on August 25, 2015 she discovered the locks had been changed, is inconsistent with her written submission, in which she declares that on September 19, 2015 she discovered the locks had been changed. Given her inconsistent evidence, I find I am unable to rely on her evidence to determine the date the locks were changed.

I find the testimony of the Tenant, who stated that he changed the locks to the rental unit on, or about, October 02, 2015 is not credible, given that the Landlord refers to this concern in documents that were submitted to the Residential Tenancy Branch on September 21, 2015. I find it highly unlikely that the Landlord would have raised this concern if the Tenant had not yet changed the locks to the front door of the rental unit.

I find that I have insufficient evidence to determine when the locks to the front door were changed. I find, however, that the date the Tenant breached section 31(3) of the *Act* is not particularly relevant to the issues in dispute at these proceedings.

Even if I were to accept that changing the locks without proper authority was grounds to end this tenancy in accordance with section 47 of the *Act*, I find there is insufficient evidence to establish that it would be unreasonable for the Landlord to end this tenancy in accordance with section 47 of the *Act*.

In determining that it was not unreasonable to require the Landlord to wait for a notice to end the tenancy under section 47 of the *Act* to take effect, I was heavily influenced by sections 31(1) and 29(1)(b) of the *Act.*

Section 31(1) of the *Act* gives landlords the right to change the lock to the rental unit providing they provide the tenant with a key to the new lock. Section 29(1)(b) of the *Act* authorizes a landlord to enter a rental unit for a reasonable purpose, such as changing the lock on the front door, providing the landlord gives the tenant written notice of the reason for entering the unit and the time and date of the entry, which must be between 8 a.m. and 9 p.m., and providing the notice of entry is given at least 24 hours and not more than 30 days before the entry.

As the Landlord has the means of changing the lock to the front door of the rental unit, thereby providing her with the ability to access the rental unit in the event of an emergency, I find there is no urgent need to end this tenancy. In the event the Tenant again alters the lock without lawful authority after the Landlord changes the lock and retains a key, the Landlord may have grounds to end this tenancy early, in accordance with section 56 of the *Act*.

I find that the Landlord has failed to establish grounds to end this tenancy early, pursuant to section 56 of the *Act* and I therefore dismiss her application to end the tenancy early and for an Order of Possession.

Conclusion

The Landlord’s Application for Dispute Resolution is dismissed in its entirety.

The Landlord retains the right to file an Application for Dispute Resolution seeking an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause that the Tenant acknowledged receiving on October 23, 2015.

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: October 31, 2015

Residential Tenancy Branch