



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREAT RADIANCE HOLDING(S)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on February 13, 2016 to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) and to recover the filing fee from the Landlord.

An agent for the Landlord (the “Landlord”) and the building manager appeared for the company Landlord. The Tenant also appeared for the hearing. The parties provided affirmed testimony during the hearing. The Landlord confirmed personal receipt of the Tenant’s Application and both parties confirmed receipt of each other’s documentary and photographic evidence prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy for the rental unit in an apartment building started on September 1, 2001 on a fixed term basis which then continued on a month to month tenancy. The parties signed a written tenancy agreement and at the time of this hearing the rent payable is \$1,095.00 on the first day of each month. The Tenant paid a security deposit of \$377.50 on August 20, 2001 which the Landlord still retains. The parties confirmed that there were no rental arrears at the time of this hearing.

The Landlord testified that on February 9, 2016 the building manager received a phone call from a resident occupying the suite directly below the rental unit regarding a leak. The building manager attended the suite and determined that the leak was coming from the Tenant's rental unit and was leaking into the electrical panel of the resident's suite wall.

As a result, the building manager immediately entered the rental unit with a plumber to attend to the leak. The building manager testified that she smelt a strong odor of mold and mildew coming from inside the rental unit and when they went to the location of the leak, they saw that it was coming from the kitchen faucet.

The Landlord testified that the leak was temporarily repaired by the plumber who then had to return the next day to fix it permanently. The Landlord testified that the kitchen cupboard underneath the sink was laden with mould and referred to a photograph showing extensive mold growth in this area. The Landlord submitted that the leak had been occurring for a number of weeks and that the Tenant had neglected to see this and report this to the Landlord which ultimately led to the leak into the suite below.

The Landlord referred to the plumber's report who writes "Faucet looks to have been leaking for a few weeks". The Landlord also referred to the electrician invoice which shows that the circuit breakers had to be replaced. The Landlord testified that the circuit breakers in the suite downstairs had rusted and this was the reason why they had to be replaced; the Landlord submitted that this was additional evidence to suggest that the leak had not just occurred but was happening over a period of time which the Tenant failed to notice. The Landlord testified that the cabinet was soaked and wet and this suggested that the water accumulation had been occurring over some time.

The Landlord explained while the Tenant was not responsible for causing the leak in the faucet, the Tenant's lack of action had put the property at significant risk, created a safety concern with water leaking into the electrical panel, and has caused significant damage which has had to be remediated at a cost of which is now running into thousands of dollars as evidenced by the receipts provided.

As a result, the Landlord personally served the Tenant with the Notice on February 10, 2016. The Notice was provided into evidence and shows a vacancy date of March 31, 2016. The Notice shows that the reasons for ending the tenancy are as follows:

- The Tenant has seriously jeopardised the health and safety or lawful right of another occupant or the Landlord;
- The Tenant has put the Landlord's property at significant risk; and

- The Tenant has engaged into an illegal activity that has damaged the Landlord's property.

The Tenant confirmed personal receipt of the Notice on February 10 2016. The Tenant testified that he was a long term Tenant of good standing and that he felt bad for the situation. The Tenant explained that he noticed on February 8, 2016 that the base of the kitchen faucet was leaking when it was turned on. The Tenant testified that he attempted to tighten the connection but to no avail. The Tenant went to sleep and then in the morning, the Tenant noticed that when the faucet was turned on, the water was starting to spurt out of the faucet base. The Tenant testified that he tried to again fix it but he could not so he turned the faucet off so there was no leak as he had to rush off to work to attend to a work emergency. The Tenant stated that he left the rental unit intending to notify the Landlord when he returned from work that day. However, when he returned home he found that the Landlord had entered his rental unit to deal with the situation.

The Tenant explained that he had noticed the smell of mould from the kitchen area a few days prior to the leak but he stated that he did not see the mould in the cabinet as he only used it when he was disposing of garbage. The Tenant said that he had a multitude of products in the cupboard which made it difficult to see right into the cabinet where the mould in the Landlord's photograph was located. The Tenant stated that he was unaware that there was a leak taking place beneath the sink.

The Landlord referred to section 13 of the signed tenancy agreement which requires that the Tenant shall immediately notify the Landlord in the event of a discovery of water escape. The Landlord submitted that the Tenant failed to notify the Landlord of the leak when he discovered it and had a duty to call the emergency number which was provided to him for his tenancy. The Landlord suggested that the Tenant knew of the leak and failed to notify the Landlord.

Analysis

Having examined the Notice, I find that the content and the manner in which it was personally served to the Tenant, complied with the requirements of the Act and the date of vacancy detailed on the Notice is also correct. I also find that the Tenant disputed the Notice within the ten day time limit afforded by Section 47(4) of the Act.

When a Landlord issues a tenant with a Notice for the reasons documented above, the landlord must prove, on the balance of probabilities, that at least one of the reasons provided on Notice is sufficient grounds to end the tenancy.

In making my findings in this case, I refer to the following sections of the Act. Section 32(2) of the Act requires a tenant to maintain reasonable health, safety and housing standards. Section 33 of the Act requires a landlord to provide to a tenant contact details for emergency repairs. Section 33 of the Act also defines an emergency repair as those involving major leaks in pipes.

Based on the foregoing, I find that when the Tenant discovered the leak in the kitchen faucet on February 8, 2016, the Tenant's duty pursuant to the Act and in accordance with section 13 of the tenancy agreement was to immediately notify the Landlord or the building manager. However, I find the Tenant went against this requirement by attempting to fix the repair himself.

Furthermore, the Tenant also failed to abide by this requirement the next day on February 9, 2016 when he discovered that the leak had gotten worse. At this point in time, it would have been a reasonable expectation that the Tenant would have taken the necessary steps in informing the Landlord or the building manager of the problem even though the spurting water stopped when the faucet was turned off and the Tenant left the rental unit for work.

I do not accept that the Tenant's ability to take reasonable steps in informing the Landlord was inhibited because he had to rush off to work. Furthermore, if the Tenant had to rush off to work then he could have informed the Landlord on his way to work or when he got to work. Instead the Tenant left this vital step of informing the Landlord until the end of his work day by which point the leak had emanated itself in the downstairs suite.

On this basis, I find the Tenant put the Landlord's property at significant risk and at the very least could have mitigated damage and loss by informing the Landlord in a timely and reasonable manner which he did not. Furthermore, I am satisfied by the Landlord's photographic evidence and plumber's report that the leak was a slow one which occurred over a number of weeks which explains the mould growth.

The Tenant explained that he had not seen this mould growth because he only used this cupboard for garbage and storage of products. While I find that this could be a plausible explanation as to why the Tenant did not see the mould growth, I find it difficult to believe that when the Tenant did smell mould and attempted to fix the leaking faucet, it would have been highly likely that this would have come to his attention during this time. At that point, the Tenant should have had known that this was a serious problem that warranted immediate notification to the Landlord.

Based on the foregoing, I find that the Tenant failed to notify the Landlord of the leaking faucet when it came to his attention and this put the Landlord's property at significant risk, caused significant damage to the downstairs suite as verified by the invoices relating to the remediation costs involved, and put the downstairs resident's safety at risk as water was leaking into the electrical panel of that suite. Therefore, I find the Landlord has proved the Notice and it is upheld. The Tenant's Application to cancel the Notice is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notice has now passed, but the Tenant has paid rent for April 2016, the Order of Possession granted to the Landlord is effective for 1:00 p.m. on April 30, 2016. If the Tenant fails to vacate the rental unit on this date and time, the order may be enforced in the BC Supreme Court as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenant.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application to cancel the Notice without leave to re-apply. The Landlord is granted an Order of Possession which is effective for the end of April 2016.

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: April 04, 2016

Residential Tenancy Branch