Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MND, DRI, OLC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated and received March 5, 2017. The Notice claims that the tenant seriously jeopardized the health or safely or lawful right of another occupant or the landlord.

She also seeks to dispute a rent increase. However that matter is not longer in dispute.

The tenant also seeks a monetary award for costs relating to the dispute resolution process, costs incurred as the result of the landlords failing to provide a service address in an earlier application (related file noted on cover page of this decision) and damages for “stress, harassment and defamation of character.”

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has seriously jeopardized a lawful right or interest of the landlord? Does it show that the tenant is entitled to a compliance order or a monetary award on any of the three grounds above?

Background and Evidence

The rental unit is the three bedroom upper portion of a house. The tenancy started in May 2014. From approximately June 2014 the tenant rented the lower portion of the house as well. That lasted for a year, until May 2015, after which her tenancy was confined to the original upper portion.

The monthly rent is $1234.00, due on the first of each month.

The landlord holds a $600.00 security deposit paid at the start of the tenancy and a $600.00 pet damage deposit.

When the tenant commenced renting the entire home, she paid an additional $250.00 security deposit. The landlord continues to hold that money.

The landlord Ms. D.S. testifies that they have been trying to sell the home, with the assistance of a realtor. She says that on March 4, 2016, the realtor attempted to arrange for three showings of the rental unit for March 6 but the tenant refused two of them as being inconvenient.

As well, Ms. D.S. says the realtor attempted to arrange for a showing, possibly and “open house” for March 20 between 9:00 am and 6:00 pm but the tenant would not cooperate.

She says that as a result the landlords have missed various opportunities to show the premises to prospective purchasers.

The tenant says the landlord Ms. D.S. is only telling part of the story. She says she has tried to arrange other times with the realtor; times more convenient for her and her family.

She says that between January 24 and March 7, 2016 the realtor has scheduled sixteen different showings. She says that since March 7, the realtor has scheduled twenty two showings with her cooperation.

The tenant says that in a previous application, brought by the landlords seeking a rent increase, but ultimately cancelled by them, she incurred expenses between $60.00 and $70.00 attempting to obtain the landlords’ address for delivery of documents. The application the landlords' served on her had the address portion blacked out. She says she was required to travel to the Residential Tenancy office to view the original application, in order to get that address.

She feels that the landlord Mr. R.G. is bullying her and trying to push her out.

In response, the landlord Ms. D.S. says that the tenant contacted the city, the local government, about the “in law suite” in the lower portion of the house.

She says the tenant has said that she will not let the realtor in the house.

She says the Residential Tenancy branch informed her that she could black out the landlord's address in the copy of the application served on the tenant.

In response the tenant says she has a pleasant relationship with the realtor, a Ms. K.F., who drops off donation bottles to the tenant for a cause the tenant supports.

Analysis

As it was not clearly stated, I assume the landlords argue that the tenant is jeopardizing their lawful right or interest by refusing to agree to their desired showings or open house times as proposed by their realtor.

A residential tenant in British Columbia is entitled to exclusive possession of the rental unit. That entitlement is subject only to s. 29 of the *Residential Tenancy Act* (the "*RTA*"). Section 29 provides:

> **Landlord's right to enter rental unit restricted**
>
> **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).

As can be seen, a landlord may enter a rental unit with the tenant's permission or a landlord may enter without the tenant's permission if proper notice has been given.

In this case the landlord's realtor has attempted to arrange for the tenant's permission is all cases and, from the uncontradicted testimony of the tenant about the number of showings even after the Notice was issued, the realtor has largely been successful. It appears the realtor has acquiesced to the tenant's requests not to show the home on some occasions.

There has been no case where proper notice to enter having been given, the tenant has prevented the realtor from entering. For this reason I find that the tenant has not seriously jeopardized the lawful right of the landlords.

In any event, Residential Tenancy Policy Guideline 7, "Locks and Access" indicates:

> Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

Even had the tenant prevented the realtor from entering after proper notice, the landlords' remedy would appear to be to apply for an order for entry at a specified time and for a specified purpose.

In result, the one month Notice to End Tenancy must be cancelled.

In regard to the tenant's claim for recovery of costs incidental to this hearing, that claim must be dismissed. An arbitrator's power in regard to costs and disbursements incurred in the dispute resolution process is limited to the filing fee.

The blacking out of the landlord's address for delivery in the previous dispute resolution application is a different matter.

Section 59(2) of the *RTA* requires that an application for dispute resolution must be in the "applicable approved form."
The applicable approved form in the case of the landlords' earlier application is RTB 12L. That form requires an applicant to provide an address for service of documents or notices--where material will be given personally, left, faxed or mailed.

Subsection 59(3) of the *RTA* requires the applicant to give the respondent a copy of that application within three days after making it.

There is no provision in the *RTA* authorizing the director or anyone acting under her from varying from or changing the requirements of the approved form in individual cases.

Residential Tenancy Policy Guideline 12, "Service Provisions" states that any "applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored."

I find that the landlords have breached the provisions of the *RTA* by failing to serve the tenant with a complete copy of the previous application and as a result the tenant was put to unnecessary inconvenience and expense.

Normally the tenant's claim in this regard would be a matter properly dealt with in the previous arbitration hearing. However, that hearing was cancelled by the landlords and so the tenant has not had an opportunity before this hearing to make the claim.

She has adequately particularized her claim in her materials and so I find that it is properly before me.

As a result of the landlords' non-compliance the tenant has been put to the cost of two facsimile transmissions and to a personal attendance to view the original application at the Residential Tenancy branch in Burnaby, approximately 75 km from the town in which the rental unit is located.

In all the circumstances I consider $65.00 to be an appropriate award to the tenant for the cost and inconvenience incurred by the landlords' breach of the *RTA*.

It should be noted that an applicant can use any address for service. It need not be one's residence. If the landlords' here were concerned about disclosing a particular address to the tenant, they could have chosen a different address to put in their application; the address of an associate, an agent or a friend.

The tenant's claim for "stress, harassment and defamation of character" must be dismissed.

She has not provided clear particulars of the grounds for the claim.

Her statement that the landlord is bullying her and trying to push her out was not substantiated by evidence given during this hearing.

There is nothing in the evidence to take this matter beyond the inherent stress that could normally be associated with disputes that landlords and tenants find themselves in.

The tenant did not give evidence during the hearing about what conduct she considered constituted harassment by the landlords. Nor did she give evidence about how she was defamed or to whom. There was a mention of an allegation by the landlord that she once worked for a local government, but it was not explained how this was defamatory in any way.

In regard to the tenant's request for a compliance order, she provided no details about what it is the landlord needs to be ordered to comply with, nor any evidence from which such an order might obviously arise. This item of the claim is dismissed.

Conclusion

The tenant's application to cancel the Notice to End Tenancy dated March 5, 2016 is allowed.

The tenant is entitled to a monetary award of $65.00. I authorize her to reduce her next rent due by $65.00 in full satisfaction of the award.

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 17, 2016

Residential Tenancy Branch