Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LAT, OLC, RP, MNDC, FF

Introduction

This hearing dealt with two applications by the tenant for the same relief. The tenant applied for order setting aside a 2 Month Notice to End Tenancy for Landlord's Use dated March 23, 2016; compelling the landlord to comply with the Act, regulation or tenancy agreement; authorizing the tenant to change the locks in the rental unit; compelling the landlord to make repairs; and a monetary order including damages for loss of quiet enjoyment and a rent reduction for failure to provide services and repairs. Both parties appeared and gave affirmed testimony.

The tenant filed 267 pages of evidence (99 of which were duplicates) and electronic evidence; the landlord filed 93 pages of evidence. No issues regarding the service of evidence were identified.

Pursuant to Rule 2.3 and 6.5 of the *Residential Tenancy Branch Rules of Procedure* which provide that claims made in an application for dispute resolution must be related to each other and that, if they are not, arbitrators may dismiss some of the claims with or without leave to re-apply, I dismissed the claims for a repair order and rent reduction with leave to re-apply.

I also advised that the *Residential Tenancy Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence and this part of the claim is dismissed.

The tenant had kept his 14 and 16 year old sons home from school as potential witnesses. Although a 16 year old is competent to give testimony in a hearing I declined to hear that witness for the following reasons:

- We were at the end of the time allotted for the hearing. If I heard the witness we would have had to continue the hearing at a date some weeks in the future.
- I had already heard from both parents and the likelihood of their son saying anything different from his parents, who were in the room with him, was slight.

The hearing proceeded on the tenant's applications for orders setting aside the notices to end tenancy and allowing him to change the locks; and a monetary order for loss of quiet enjoyment only.

Issue(s) to be Decided

- Are the 2 Month Notice to End Tenancy for Landlord's Use dated March 23, 2016 valid?
- Should an order be made allowing the tenant to change the locks?
- Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

There are two rental units and two separate tenancy agreements. The rental units are the two floors of the same house. The tenancy of the upstairs unit commenced June 1, 2012. The monthly rent of $1100.00 is due on the first day of the month. As of November 1, 2012, the tenant also rented the downstairs unit. The monthly rent for that unit is $800.00 and is also due on the first day of the month. The rent has not changed since the start of this tenancy.

The tenant and his wife are separated. The tenant lives in the lower unit with their 14 year old son. His wife lives in the upper unit with their 16 and 12 year old sons. The tenant has a sub-tenancy arrangement with his wife; she pays him her share of the rent and he pays the entire amount of $1900.00 to the landlord.

At first the utilities were in the landlord's name. After more than a year of conflict about the proper amount to be charged and late payment by the tenant the utilities were transferred into the tenant's name in January 2014.

The landlord testified that there were written tenancy agreements. The tenant's written material states: "I do not have a lease as mentioned but I do believe I received one but I never did find it. My recognition was that the lease up read exactly as the lease down."

A copy of a written tenancy agreement was filed. Although the landlord's telephone numbers are on the document her mailing address is not.

The tenant argued that there had been a history of harassment and abuse by the landlord. The landlord testified that she is at the rental unit a couple of times a year. She testified that every encounter with the tenant is a confrontation so she has attempted to minimize her contact with him. When things arise she has her contractor attend at the rental unit. The tenant says the landlord has only been to the rental unit twice in the past two years and the landlord has sworn at him and called him names on both occasions.

Both parties filed samples of e-mail exchanges between them.

In 2013 the landlord was asking for payment of the utilities. The one of the first requests were was polite but firm. By December 3, 2013 her email stated:

> "Todd I need the rent and the money for the Utility Bill attached in my account ASAP. I don't know how to explain this any clearer, the mortgage comes out first and I need to cover it, I cannot say to the bank sorry Todd doesn't have it right now. I am being constantly stressed out form this because I am in overdraft and left with no resources for meds, food, tec. I need that money. Deposit 1977.61 ASAP."

The payment of the utilities continued to be an issue so on March 16, 2014, after receiving an email from the tenant that he couldn't pay anything until the end of the month and he doesn't understand the landlord's claim for $600.00, the landlord replied:

> "I've sent you the bills three times, your not an idiot your just trying to stall. These are Dec and Jan electric and gas bills (yours not mine), I shouldn't have to pay for your utilities, this is getting very tiring. I want the money YOU OWE ME."

The tenant's response was:

> "I'm calling Abby police as well I feel threaded again.";

and a few minutes later:

> "I spoke with Abby police just now
> Police told me to tell u Please stop emailing and do not threaten again
> I will call tenants rights and lawyer tomorrow . . .
> If you come to the house or email threats I will report it."

During this same time the landlord wrote the tenant's wife about the communications with the tenant. She says, among other things, that: "his statements are grossly offensive in that his children are being threatened." This email concludes with: "I need a response within 24 hours, or we will begin the process to evict immediately."

In February of 2015 there was an unpleasant exchange of emails about the cost of hauling away an old couch. The exchange started with the landlord writing:

> "Please add $50.00 to the rent for this month to pay for Joe's time, truck and dump fee to clean up the junk in the back yard."

The tenant objected to the request in his usual manner. The landlord responded with:

> "Excellently when you owe money your response is that somebody is threatening you to side track the fact that you are responsible. Todd just pay and stop the games. I'm not that stupid and remember you are living in MY house . . .".

Around the same time the tenant went to see a local advocacy group. After hearing out the tenant the advocate wrote the landlord a letter dated February 3, 2015. In addition to referring the landlord to the legislation the advocate said that the tenant emphasized that he wanted all future communication by mail and asks for the landlord's mailing address. She

states that the tenant does not want to communicate by telephone or email. The advocate also asks that copies of the tenancy agreement be provided to the tenant or herself.

On March 3, 2015, the landlord emailed the tenants informing them that she had been contacted by a local municipal bylaw officer about multiple complaints received regarding the rental unit. The landlord described the complaints and advised the tenants that "She has stated that she will begin fining for these offices. If you continue this behaviour I will begin the steps for eviction."

In the same email the landlord included information from the municipality about their requirements for garbage containers (the subject of the complaints) and information about the *Residential Tenancy Act*. The landlord highlighted the portions about the tenant's obligation to pay the rent when due and pointed out that the rents for January, February and March had all been paid late.

The tenant's response was:

> "February and March paid on the 1rst
> SUNDAY CHECK THE BANK
> When is it DUE?
> PLEAE STPP HARASSMENT
> HOW MANY TIME HAVE I ASKED
> EVICT ME IF YOU HAVE A REASON
> DON HARRASS ME"

On March 4, 2015 the advocate sent the landlord an email. Once again she asks the landlord to provide her mailing address. She says that: "on the telephone they told me the Residential Tenancy Branch does not acknowledge correspondence through emails". (Note: This is not accurate. It is only notices to end tenancy sent by email that are not legally effective.) Once again, she refers the landlord to the Residential Tenancy Branch website.

The landlord expressed her frustration to the tenant's wife in an email dated March 4, 2015:

> "I will no longer deal with Todd. If this behaviour continues I will proceed with eviction . . I mean it I am very tired of dealing with him and his behaviour. I now am dealing with the city and neighbours because of his actions."

The landlord filed copies of emails from the tenant dated June 1, 2015, October 1, 2015 and February 1, 2016 explaining why he cannot pay the rent in full on that date. She also filed a copy of her bank statement to show that in the 14 month period from March 1, 2015 to April 1, 2016, the tenant paid the rent in full and on time on only six occasions.

The tenant had reported to the landlord that various repairs were required so on Saturday, March 19, 2016 the landlord, her husband, and her contractor went to the rental unit.

The tenant admitted them to the lower unit. The landlord was very unhappy with what she saw. The landlord and her husband both testified that she "lost it". She was swearing, screaming and "not pleasant at all". The landlord's husband testified that the tenant responded with a "torrent of threats and accusations". The tenant claimed that the landlord's husband assaulted him and called the police, who never came. At first the

contractor and the landlord's husband tried to continue with the repairs but finally the contractor left. The witness said he was able to stay calm because of his work experience; his wife was not.

After the contractor left the landlord's husband went upstairs to talk to the tenant's wife. She admitted him to her unit and they talked about some repairs. During their conversation with the tenant's wife the tenant came upstairs yelling and screaming that since he was on the agreement they should be talking to him.

The tenant's wife testified that there was a lot of yelling on March 19. She tried to ignore it but it went on for a very long time. She said the landlords came upstairs to talk to her. They told her the tenant was going to be evicted but they would try to work with her. The tenant then came upstairs and asked the landlords to leave. They said to her: "sorry, but you're out too".

The evidence is that this episode lasted for two or three hours.

The landlord and her husband testified that this rental house was the landlord's project. In fact, this was only the second occasion the husband had been to the property; the first was at the start of the tenancy. This home had been bought as an investment and an eventual retirement home. They own and live in a condominium located in a community closer to the landlord's place of work.

The previous tenants had not been very good tenants. The landlord testified that she would have ended this tenancy sooner but the tenant's wife is a very fine person and she felt sorry for her and the children.

On the way home the landlord and her husband discussed their options. The landlord said she was tired of dealing with tenants. She wanted to sell the condominium and move into this home, even if it meant a longer commute until retirement.

They also decided that they wanted to do a full inspection of the property. The landlord had two friends serve the tenant with a 24 Hour Notice of Inspection at suppertime on March 22. The inspection was set for March 23 at 6:00 pm. Both women submitted letters saying they gave the document to the tenant personally.

The tenant was very upset. Based on his research he believed that a landlord could not conduct two inspections within a four day period. The landlord's position was that the attendance on Saturday had been for the purpose of repairs and was not an inspection.

The tenant sent emails to the landlord and to various public officials on March 33 at 5:53 pm, 8:47 pm; 9:16 pm, 11:37 pm, 11:53 pm; 12:06pm; 12:26 pm, 12:29 pm; 12:48 pm, and continuing on March 23 at 1:00 am; 1:35 am; 4:20 am; 4:39 am; and 9:20 am. The emails are frantic in tone and barely coherent.

Finally at 9:12 am on March 23 the landlord emailed the tenant:

> "Please stop e-mailing me at work. We have given you 24 hours written notice that we will be there this evening at 6:00 pm. I will have a police officer present."

The landlord and her husband arrived at 6:00 pm on March 23. The police had an emergency and were not able to be there at the appointed time. The landlord and her husband had the notices to end tenancy with them but they wanted the police to be present when they served them on the tenant.

At first they went to the lower unit. The tenant opened the door and screamed at them. They went upstairs and the tenant's wife let them into her unit. She testified that she was not threatened by the landlord or her husband. The three of them waited in the living room until the police arrived. During the hour or so they waited the landlord's husband called the police three time; the tenant's wife offered them coffee; the landlord's husband looked around the unit and took some photographs; and they chatted. The tenant came upstairs several times during this period. The landlord and her husband said the tenant was yelling and screaming. The tenant said he was not. His wife said that he was very upset, which was understandable after the events on Saturday, and at one point he got loud so went to her room until it got quiet again.

Finally the police arrived. The landlord gave the tenant three 2 Month Notices to End Tenancy: one for the upstairs unit; one for the downstairs unit; and one for the whole house. They testified that they were not sure what would be the proper procedure and they wanted to be sure they did it properly. After they gave the tenant the documents they left. They never went into the downstairs unit and they have not been back to the house since.

The tenant's wife testified that their sons heard everything on both occasions and they are upset by the events.

The landlord filed an email from their real estate agent dated April 16, 2016 advising that their condominium had been sold; the completion date of the transaction is June 29; and the possession date for the new owners is July 1.

The tenant argues that the landlord started threatening eviction because he would not stop requesting a service address and lease. He says that without an address for service he could not file an application with the Residential Tenancy Branch for repairs or any other relief that was appropriate.

The landlord did not provide a mailing address to the tenant until an email dated March 15, 2016. The tenant's written material says that he had already obtained her address a few days earlier by calling the gas company.

The tenant also argues that the landlord only served the notices to end tenancy after she attempted to gain illegal entry to his suite and that the notices are retaliation for his efforts to protect his and his family's rights.

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.

Section 49(2) allows a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

As explained in *Residential Tenancy Policy Guideline 2: Good Faith Requirement when Ending a Tenancy* the landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy. In this case the landlord has provided documentation that her home has been sold and she has testified that she intends to live in this house as her home. The fact that she has had conflicts with this tenant and that she no longer wishes to be a landlord does not change the fact that she is entitled to move into a home that she owns if she decides to, especially if she has sold her other home.

I find that the 2 Month Notices to End Tenancy for Landlord's Use dated March 23, 2016 are valid. The tenant's application to have those notices set aside is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and:

- the notice to end tenancy complies with section 52; and,
- the application is dismissed or the notice to end tenancy is upheld;

the arbitrator must grant an order of possession of the rental unit to the landlord.

The effective date of a 2 Month Notice to End Tenancy served in March is May 31, 2016. The tenant has not paid the May rent. The order of possession will be effective two days after service.

As the tenancy is ending no decision is required on the tenant's application for permission to change the locks.

Section 13(2) sets out that every tenancy agreement must include certain information including the address for service and telephone number of the landlord or the landlord's agent. This tenancy agreement does not contain the landlord's address for service. The tenant did have the landlord's work address as it is clearly shown on the e-mails she sent him and his own evidence is that he was able to find out her address by calling the gas company. Although the landlord did not comply with the legislation the results of the breach appear to be minimal.

The law regarding a landlord's right of entry is set out in section 29 and fully explained in *Residential Tenancy Policy Guideline 7: Locks and Access*. A landlord must not enter a

rental unit unless certain conditions have been met. One of those conditions is that the tenant gives permission at the time of entry.

The landlord was in the lower unit on one occasion and that with the permission of the tenant. While there was a dispute as to whether the landlord could enter the lower unit on March 23 the fact is the landlord did not enter the unit when the tenant refused them permission. The landlord was in the upper unit on two occasions, but on each occasion it was with the permission of the resident. The landlord has not contravened the provisions of the legislation.

The right of quiet enjoyment is explained in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment.* It explains that frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment. Some examples of such interference might include are serious instances of entering the premises frequently, or without notice, or permission; and persecution and intimidation. The *Guideline* sets out that it is ordinarily necessary to show a course of repeated or persistent threatening or intimidating behaviour. There are a number of definitions for harassment but all reflect an element of ongoing or repeated activity by the harasser.

Basically the tenant argues that the very ugly scene on March 19; two previous unpleasant incidents with the landlord; the notice to enter for March 23; and her threats to evict them if the rent or utilities are not paid or the local municipality imposes fines; all comprise a breach of his right to quiet enjoyment.

He argues that the threats of eviction only started after he asked for an address for service. In fact, the evidence shows that the landlord was threatening to end this tenancy before then. The evidence also shows that eviction was the only threat made by the landlord.

Asking for payment of rent or utilities due to them and threatening to end the tenancy if the tenant does not comply with the tenancy agreement does not comprise harassment by a landlord. Certainly there were occasions when the landlord expressed her frustration with the tenant but his communications with her were no more civil.

The tenant testified that there were three unpleasant encounters with the landlord in four years. This does not represent ongoing or repeated behaviour by the landlord. It might be argued that the multiple emails from the tenant to the landlord on the night of March 22/23 better fits the definition of repeated on ongoing behaviour than the landlord's behaviour.

I find that both the landlord and the tenant behaved very poorly in March: the landlord should not have expressed herself in the manner in which she did on March 19 and the tenant should have exercised more self control and maturity on March 23, particularly in the

presence of his children. However, one scene does not amount to a breach of quiet enjoyment that would result in a monetary order.

The tenant's claim for damages for breach of quiet enjoyment is dismissed.

Conclusion

a. For the reasons set out above the tenant's application is dismissed without leave to re-apply.
b. An order of possession effective two days after service is granted to the landlord. If necessary, this order may be filed in the Supreme 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 01, 2016

Residential Tenancy Branch