Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC MNDC LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70

The hearing was conducted by conference call. All named parties attended the hearing.

By way of an Interim Decision dated June 8, 2016 the tenants' application for a monetary order for compensation for damage or loss and for an order to set conditions on the landlord's right to enter were dismissed with leave to reapply. The tenant's application to cancel the 1 Month Notice to End Tenancy For Cause was the only issue before me in this hearing.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the relevant documentary evidence and testimony of the parties, not all the details of the submissions and/or arguments are reproduced here.

The rental unit is an apartment in a 36 suite senior's complex. The tenancy began sometime in 2008. There is no written tenancy agreement in place between the parties and no condition inspection report was completed at the start of the tenancy. The current monthly rent of $748.00 is payable on the 1st day of each month.

The landlord served the tenant with the 1 Month Notice on April 11, 2016. The landlord issued the Notice on the following grounds that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant; jeopardized a lawful right or the interest of another occupant or the landlord; has not done required repairs of damage to the unit/site and breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In order for the landlord's notice to be upheld, the landlord needs to establish cause on at least one of the above grounds. The landlord submitted the following evidence in support of the grounds that the tenant significantly interfered with the landlord and jeopardized a lawful right or the interest of the landlord:

- A notice dated Saturday, February 20, 2016 stating an inspection of the tenant's suite will be conducted on Monday between the hours of 10:30 a.m. to 1:30 p.m.
- A letter dated February 25, 2016 listing 13 items the landlord required cleaned or repaired in the next four weeks before the next inspection.
- A response letter from the tenant dated March 23, 2016, in which the tenant writes that the landlord's entry into the rental unit was not justifiable as the reason for the inspection was not reasonable. In this letter, the tenant quotes section 29 of the Act, *Landlord's right to enter rental unit restricted.* The tenant further writes that she would allow access with proper notice for the repairs that she is requesting and puts the landlord on notice that if his entry were to happen again, she had the right to apply to the tenancy Branch for permission to change the locks. On this same date, the tenant issued a letter requesting the landlord repair certain items.
- A notice dated March 31, 2016 stating an inspection will be conducted on April 4, 2016 between the hours of 9:00 a.m. and 2:00 p.m. The landlord testified that upon giving this notice to the tenant, the tenant stated that she would not allow the landlord into her suite for any reason.
- A notice dated April 4, 2016 stating an inspection will be conducted on April 11, 2016 between the hours of 9:00 a.m. and 12:00 p.m. This notice states "this is your 2nd notice".

- A letter dated April 4, 2016 issued to the tenant stating the landlord was not able to access the suite for inspection on this day. In this letter, the landlord provided notice that if the tenant did not allow an inspection on April 11th, the landlord would have no choice but to issue the tenant a Notice. The letter further stipulated the requirements of section 31 of the Act, *Prohibition on changes to locks and other access*.
- The landlord submits that on April 11, 2016 he was unable to conduct an inspection of the suite as the tenant had changed the locks to the rental unit.
- A witness letter dated May 13, 2016 and testimony from the building caretaker C.R., stating the landlord was not able to open the rental unit door with his keys on both April 4 and April 11, 2016. C.R. testified that he accompanied the landlord on these two dates and witnessed the landlord unsuccessfully attempt to open the door with his keys. On cross-examination by the tenant's advocate, C.R. testified that he knew the landlord was attempting to use the master key as he recognized it as the master key that opens all other unit doors. The master key is identifiable as it is silver and he himself has used it in the past. He did not try his own copy of the master key as both keys are the same. He noticed that the lock looked different as the deadbolt appeared to be a different color. He or the landlord did not take any pictures of the deadbolt.

In response to the above, the tenant submitted the following:

- Testimony from witness S.N. stating that she was present inside the rental unit with the tenant on April 11, 2016 when the landlord inspection was to take place. S.N. testified that the door was locked and the tenant asked her to call the police if the landlord attempted to enter the rental unit by putting a key in the door. S.N. testified that she and the tenant were standing right at the door on the inside and she did not hear the landlord putting a key in the door. S.N. testified that she did not notice anything unusual with the door.
- Testimony from the tenant confirming that she wrote a letter to the landlord after the February 22, 2016 inspection stating the entry was not justifiable but wrote that she would allow access with proper notice. The tenant testified that she did not change the locks of the rental unit. She testified that she did mention to the landlord that she would seek an order to change the locks but wouldn't know how to do it herself. She was aware of the procedure on how to make an application to seek such an order. On cross-examination by the landlord, the tenant testified that she had a problem with the landlord carrying on an inspection as she didn't think a man should be looking behind or under her bed. The tenant was referring to the landlord inspecting the baseboard heater located behind her bed. In

response to the landlord's question of why she did not let him in the 2nd time, the tenant responded, "I didn't think you needed to check dust bunnies under my bed".

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

Section 29 of the Act contains provisions respecting the restrictions of a landlord's right to enter the rental unit. This section requires a landlord to provide written notice of entry which includes a reasonable purpose and the date and time of entry. Subsection 29(2) provides that a landlord may inspect a rental unit monthly.

Based on the above provisions, an inspection of the rental unit on its own is a reasonable purpose of entry and the Act permits a landlord to conduct an inspection on a monthly basis. Therefore, I find the tenant's argument that the notices of inspections issued by the landlord were not reasonable to be without merit. The notices of entry given by the landlord were given in writing, provided a purpose and date and time of entry in compliance with section 29 of the Act. The purpose in this case being an inspection of the rental unit. The landlord conducted an inspection on February 22, 2016 in which he identified some alleged deficiencies and arranged to conduct a follow-up inspection more than a month later. Regardless of whether or not deficiencies existed, were identified, or who was responsible for correcting the deficiencies, the landlord had the right to conduct further inspections on a monthly basis.

The evidence of the parties was conflicting on the matter of whether or not the tenant changed the locks to the rental unit denying the landlord access to conduct inspections as per above. I find that on a balance of probabilities, the tenant did change the locks to the rental unit. I make this finding as I found the evidence of the landlord and the landlord's witness C.R. to be more credible that of the tenants. I found the testimony of C.R. to be forthright and convincing on the point of him witnessing the landlord attempt to open the rental unit door with his master key. Even under cross-examination, C.R. did not hesitate in providing reasonable responses to the questioned posed by the tenant's advocate. Conversely, the tenant was hesitant in providing responses under cross-examination by the landlord and the tenant's own testimony confirmed that she

did not allow access to the rental unit for the follow-up inspection. The tenant was asked specifically why she did not allow access on the 2nd time and instead of responding that she did not deny access, the tenant responded that she did not think the landlord needed to check dust bunnies under her bed. In addition, the evidence supports that the tenant strongly felt the landlord's entry was not justifiable and she even wrote to the landlord stating such and threatened to make a request to have the locks changed. Further, the landlord issued the tenant a letter dated April 4, 2016 after he was not able to enter the rental unit for a scheduled inspection. If the tenant had not changed the locks as alleged by the landlord you would expect there be some response communication from the tenant denying such. The tenant did not even make reference to such in the details section of her application for dispute.

I find that by changing the locks to the rental unit and restricting the landlords right to access, the tenant has significantly interfered with and seriously jeopardized the lawful right or interest of the landlord. The tenant significantly interfered with the landlord's ability to operate his rental business and seriously jeopardized the landlord's lawful right to enter the rental unit under the Act. A notice to end tenancy was justifiable in this case as the landlord first put the tenant on notice and provided a second opportunity for the tenant to allow access.

I find the landlord has met the onus to justify he had cause to issue the 1 Month Notice. The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 22, 2016

Residential Tenancy Branch