



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPC, FF
 Tenant: CNC, MNDC, OLC, ERP, RP, LRE, OPT, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession. The tenant sought to cancel a notice to end tenancy; an order of possession; a monetary order; an order to have the landlords make repairs and emergency repairs; restrict the landlord's access; and a rent reduction.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

At the outset of the hearing I clarified with the tenant that she is still living in the rental unit. As such, I advised her that because she has possession of the rental unit she does not require an order of possession and that I would amend her Application for Dispute Resolution to exclude her request for such an order.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit; for repairs and emergency repairs; for a rent reduction; and for a monetary order. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim to suspend or set conditions on the landlord's right to enter the rental unit; for repairs and emergency repairs; for a rent reduction; and for a monetary order. I grant the tenant leave to re-apply for these other claims.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on September 13, 2015 as a 1 year 17 day fixed term tenancy for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on May 31, 2016 with an effective vacancy date of June 30, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk; the tenant has not done required repairs of damage to the unit; and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords submitted a number of specific problems with the tenancy and the tenant, as follows:

1. Painting – while the parties had agreed to painting some of the rental unit the landlords submitted they did not approve the colour the tenant painted a downstairs room;
2. Unpaid Rent – the landlords submit that the tenant deducted from the January 2016 rent \$200.00 for the cost of paint without authorization from the landlords;
3. Extensions – of both the chicken coop and garden without authorization from the landlords;
4. Hot water tank leak – the tenant stopped emptying a bucket that was collecting water leaking from the relief valve on the hot water tank;
5. Washing machine – the tenant replaced the landlords' washing machine with her own and did not inform the landlords until after she did it. The landlords referred to an addendum in the tenancy agreement stating the tenant could not do this (a copy of the tenancy agreement and addendum are in the landlord's evidence);
6. Alarm system – the tenant had the alarm system disconnected;
7. Notice to Make Repairs – the landlords submitted that they have requested the tenant repaint the downstairs room; return the original washing machine; remove the extensions to the garden and chicken coop; the alarm system; and hot water tank;
8. The tenant has refused to continue with lawn and yard care as required by the tenancy agreement; and
9. The tenant has thrown water and kick sticks at the female landlord.

The tenant submitted that she had the landlords' approval to paint the basement room including the colour and to reduce her rent as compensation for painting. She also stated the landlords agreed to the extensions of the garden and chicken coop. In support of these positions the tenant referred to text and email communication between the parties submitted as evidence.

The tenant submitted that she had informed the landlords of the problem with the hot water tank and that she started collecting the water that was leaking and emptying the bucket but that the landlords never did completed any repairs so she advised them in January 2016 that she would no longer be dealing with that and the landlords repaired the relief valve.

The tenant submitted that she had reported the problem with the washing to the landlords and that they did nothing about it so she needed to install her own machine and she was refusing to re-install the old machine that wouldn't work properly.

The tenant stated that she had done nothing to the alarm system. She testified that the cable company had installed a bypass of the system to get her phones to work but that it interfered with her ability to use the phone and it tripped the alarm so she had the cable company install a separate jack for the phone and she has done nothing to the alarm wiring.

In regard to the landlords' direction to complete repairs the tenant submitted that she contacted the Residential Tenancy Branch and was told that she did not have to complete any repairs until the tenancy ended.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant is repeatedly late paying rent;
- c) There are an unreasonable number of occupants in a rental unit;
- d) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- e) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,

- ii. 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, or
- iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- g) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- h) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- i) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;
- j) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- k) The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- l) The tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - i. The date the tenant receives the order;
 - ii. The date specified in the order for the tenant to comply with the order.

While I agree with the tenant's position that she is not responsible for repair or even monitoring the ongoing problem with the hot water tank and that there is insufficient evidence from the landlord to establish a problem with the alarm system, I do find that the landlords did have the right to request the tenant make repairs to the garden; chicken coop; re-install their washing machine; and repaint the basement room.

I am not satisfied from the tenant's text and email communication that the tenant has provided sufficient evidence to establish she had permission of the landlord on the colour of the paint job or for the extensions to garden and chicken coop.

I do accept that the parties were "in discussion" but none of the documents submitted by the tenant confirm that the landlord had agreed to either the colour of the basement room or the extension of the garden. The tenant provided no evidence of agreement on any extension to the chicken coop.

I also find that the landlords provided the tenant with an appropriate length of time to complete these repairs and the tenant has not taken any steps towards completion of any of them.

As such, I find that once the landlords requested the tenant make these repairs she was obligated to do so under Section 32 of the *Act*. Section 32(3) states the tenant must

repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Despite the tenant's position that she has until the end of the tenancy to make the repairs, the *Act* allows a landlord to end the tenancy if the tenant does not make repairs requested by the landlord for damage that is a result of the tenant's actions. I note that a tenant does have until the end of a tenancy to make repairs to the property **only** if the tenant does not want to be held liable for the cost of making the repairs after the tenancy has ended.

Based on these findings I find the landlords have established sufficient cause to end the tenancy. As I have determined the landlords have established cause to end the tenancy for these issues I make no findings of fact regarding the other causes identified in the notice to end tenancy or as submitted by the landlords.

As a result, I dismiss the tenant's Application for Dispute Resolution.

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$100.00** comprised of the fee paid by the landlords for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: July 14, 2016

Residential Tenancy Branch