



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, MND, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied:

- for an Order of Possession for Cause;
- for a monetary Order; and
- to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on September 30, 2016 the Application for Dispute Resolution, the Notice of Hearing and 9 pages of evidence the Landlord submitted with the Application for Dispute Resolution were personally served to the male Tenant. The male Tenant stated that he received these documents on September 29, 2016. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

The male Tenant filed an Application for Dispute Resolution, in which the Tenant applied:

- to cancel a Notice to End Tenancy for Cause;
- for a monetary Order; and
- to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that the Application for Dispute Resolution, the Notice of Hearing and 10 pages of evidence the Tenant submitted with the Application for Dispute Resolution were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were received on August 29, 2016. As the Landlord acknowledged receipt of the documents, they were accepted as evidence for these proceedings

On September 14, 2016 the male Tenant filed an Amendment to an Application for Dispute Resolution, in which he amended the name of the Landlord. The male Tenant stated that the Amendment to the Application for Dispute Resolution was sent to the Landlord, via registered mail, on September 14, 2016. The Agent for the Landlord

acknowledged receipt of this document and the Tenant's Application has been amended accordingly.

On October 11, 2016 the Tenant submitted five pages of evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was personally attached to the Landlord's door on October 11, 2016. The Agent for the Landlord stated that this evidence was received on October 12, 2016. The Agent for the Landlord asked that this evidence be refused as it was not served within the timelines established by the Residential Tenancy Branch Rules of Procedure.

The female Tenant stated that the five pages of evidence were served as soon as possible. She stated that the evidence was served "late" because they had to requisition reports from ICBC and the RCMP. I note that the evidence includes documents from the RCMP, dated October 04, 2016, and a letter from ICBC, dated October 03, 2016.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that a respondent's evidence must be received by the other party not less than 7 days before the hearing. As the Landlord did not receive the evidence that the Tenant posted on the Landlord's door until October 12, 2016, I find that this evidence was not served in accordance with the timelines established by rule 3.15.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence not provided to the other party and the Residential Tenancy Branch in accordance with rule 3.15 may or may not be considered depending on whether the party can show that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

Rule 3.17 of the Residential Tenancy Branch Rules of Procedure grants me the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Given the administrative delays that are typically associated with requesting and receiving documents from government agencies, I accept that the delay in serving the ICBC and RCMP documents, dated October 03, 2016 and October 04, 2016, was reasonable. The parties were advised that the "late" evidence was being accepted as evidence for these proceedings. In adjudicating this matter I was influenced, in part, by my conclusion that this evidence is directly relevant to issues in dispute at these proceedings.

The Landlord was given the opportunity to adjourn these proceedings to provide him with time to review the documents. The Agent for the Landlord stated that the Landlord was prepared to proceed. As the Landlord declined the opportunity to adjourn the hearing, I find that he was not unduly prejudiced by the acceptance of this evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

The male Tenant stated that his name is incorrectly recorded on his Application for Dispute Resolution. With the consent of both parties the Tenant's Application for Dispute Resolution is amended to reflect the male Tenant's correct name, which is reflected on this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside or should the Landlord be granted an Order of Possession?

Is the Landlord entitled to compensation for damage to the residential complex and/or for costs associated to participating in these proceedings?

Are the Tenants entitled to a rent refund and/or compensation for lost wages?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2015;
- the Tenant agreed to pay rent of \$1,250.00 by the first day of each month;
- the Landlord lives on the residential property in a separate home;
- the rental unit is situated on approximately ¼ of an acre which has been designated as the Tenant's yard;
- there is a gate at the entrance to the driveway, which is used by both the Landlord and the Tenant;
- on August 16, 2016 the male Tenant was personally served with a One Month Notice to End Tenancy for Cause
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 01, 2016;
- the One Month Notice to End Tenancy declared that the tenancy was ending because the Tenant has caused extraordinary damage to the unit/site or property/park; and
- the Landlord is attempting to end the tenancy because the male Tenant damaged the electronic gate that is at the front of their shared driveway.

The male Tenant stated that:

- on July 31, 2016 the vehicle he was driving stalled;
- when the vehicle stalled the power brakes failed and the vehicle rolled into the electronic gate;
- the Landlord was not home at the time of this accident;
- the Landlord was informed of the accident when he returned home on July 31, 2016;
- the accident was reported to ICBC by the Tenant;

- ICBC has concluded that the accident was his fault;
- there is collision insurance on the vehicle;
- ICBC has informed him that it will pay for the cost of repairing the gate;
- ICBC has informed him that the Landlord was not willing to wait for ICBC to repair the gate;
- ICBC has informed him that the Landlord has claimed compensation for the repairs through his homeowners insurance policy;
- ICBC has never informed him that there would be a delay in repairing the gate; and
- there are not typically long delays in having repairs made by ICBC.

The Agent for the Landlord stated that:

- the Landlord was informed of the accident when he returned home on July 31, 2016;
- ICBC told the Landlord there would be a delay of approximately 2-3 months if the damage was to be repaired by ICBC;
- the Landlord did not want to wait 2-3 months and he has had knee surgery and was unable to open the gate manually;
- the Landlord claimed compensation for the repairs through his homeowners insurance policy;
- the Landlord has paid a \$5,000.00 deductible to have the gate repaired by his homeowners insurance; and
- the Landlord understands that his home insurance company will attempt to recover the \$5,000.00 deductible from ICBC.

The Landlord is seeking to recover the \$5,000.00 deductible that he paid to his insurance company to repair the gate.

The Tenant is seeking a rent refund from July and August of 2016, in the amount of \$2,500.00. In support of this claim the female Tenant stated that:

- several people came onto the residential property to inspect/repair the gate;
- they were not given notice that people would be attending the property to repair/inspect the gate;
- on one occasion people repairing the gate used the Tenant's exterior tap to mix concrete.

The Agent for the Landlord stated that the Landlord was not aware workers had used the Tenant's exterior tap while the gate was being repaired.

The Landlord is seeking compensation, in the amount of \$1,890.00, for money he paid to a consultant for preparing for these proceedings. The Tenant is seeking \$1,500.00 in compensation for lost wages, which he incurred preparing for this and a previous dispute resolution proceeding.

Analysis

Section 47(f) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property. The term “extraordinary” is commonly understood to mean “beyond the ordinary”, “exceeding the usual”, “remarkable”, or “rare”.

On the basis of the undisputed evidence, I find that the electronic gate that provides access to the residential property was accidentally damaged by the male Tenant when his vehicle stalled and rolled into the gate. I find that accidents involving motor vehicles are relatively common and I cannot, therefore, conclude that the gate was damaged as a result of an extraordinary incident.

I am of the view that section 47(f) of the *Act* authorizes a landlord to end a tenancy if the cause of the damage is extraordinary. Typically a landlord would rely on this section of the *Act* to end a tenancy if a person willfully damaged the residential property or if the property was damaged as result of intentional neglect. I do not interpret this section of the *Act* to mean that a landlord can end a tenancy if it is expensive to repair the damage to the rental unit.

In adjudicating this matter I was influenced, to some degree, by section 47(g) of the *Act*, which authorizes a landlord to end a tenancy if a tenant does not repair damage the tenant caused on the residential property within a reasonable time. This section strongly suggests that a tenant should be given a reasonable amount of time to repair damage, regardless of the cost of the repair.

I find that the Landlord has failed to establish grounds to end the tenancy pursuant to section 47(f) of the *Act*. I therefore grant the Tenant’s application to set aside the One Month Notice to End Tenancy that is the subject of this dispute and I dismiss the Landlord’s application for an Order of Possession.

Section 32(3) of the *Act* stipulates that a tenant of a rental unit 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 residential property by the tenant. As the male Tenant damaged the electronic gate on the residential property, I find that he is obligated to repair the gate, pursuant to section 32(3) of the *Act*.

On the basis of the undisputed evidence I find that ICBC will repair the damaged gate, on behalf of the Tenant. On the basis of the undisputed evidence I find that \$5,000.00 deductible that the Landlord paid to his home insurance provider may be reimbursed to the Landlord by ICBC.

As the evidence shows that ICBC will likely compensate the Landlord for costs associated to repairing the gate, I find that the claim for compensation for the damage to the fence is premature and I dismiss that claim. In the event the insurance companies do not settle the claim for damage to the gate, the Landlord retains the right to file another Application for Dispute Resolution claiming compensation for the damaged

gate.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* outlines the rights and obligations of landlords and tenants with respect to entry into a rental unit. The *Act* does not require that notice be given for entry onto residential property, however, the *Act* recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents, and delivering Notices of entry to the premises.

As the electronic gate was used by both the Landlord and the Tenant, I find that there was no need for the Landlord to inform the Tenant that people would be on the property to inspect/repair the gate. I therefore find that the Tenant is not entitled to compensation because people were accessing this common area without notice to the Tenant.

I find that it would have been reasonable and prudent for the Landlord to inform the Tenant that people were going to use the Tenant's tap when the gate was being repaired, if the Landlord was aware of that possibility.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. As the discomfort/inconvenience of having a third party use the Tenant's exterior tap was a relatively minor inconvenience, I dismiss the Tenant's claim for compensation as a result of that isolated incident.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a participant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's application for consulting fees for preparing for the proceedings and the Tenant's compensation for lost wages related to time spent preparing for these proceedings.

I find that the Landlord has failed to establish the merits of his Application for Dispute Resolution and I therefore dismiss his claim to recover the fee to file an Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution has merit and that he is

entitled to recover the fee to file an Application for Dispute Resolution.

Conclusion

The Tenant's application to set aside the One Month Notice to End Tenancy is granted and the Landlord's application for an Order of Possession is dismissed. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Tenant to reduce one monthly rent payment by \$100.00 in full satisfaction of the monetary claim.

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: October 18, 2016

Residential Tenancy Branch