



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, LRE, FF

Introduction

This was a cross-application hearing.

On October 17, 2016 the tenant applied to cancel a one month Notice to end tenancy for cause that was issued on October 13, 2016, an order that the landlords' right to enter the property be suspended or be conditional and to recover the filing fee cost from the landlord.

The landlord applied on October 27, 2016 requesting an order of possession based on a notice ending tenancy for cause, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee cost from the tenant.

At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The landlord set out a claim in the sum of \$450.00 as damage or loss. Section 2.3 of the Residential Tenancy branch Rules of Procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined that a monetary claim does not sufficiently relate to matters that must be considered related to a possible end of tenancy for cause. Therefore, the monetary portion of the landlords' claim is dismissed with leave to reapply. The landlord had also set out an increased claim as part of evidence. It was explained that at the time a party applies any monetary claim must be set out, with a detailed calculation served to the respondent.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on October 13, 2016 be cancelled or must the landlord be issued an order of possession?

Should limits be placed on the landlords' right to enter the rental unit?

Background and Evidence

The current tenancy commenced on May 31, 2015. Rent is \$1,450.00 due on the first day of each month. The landlord is holding a \$700.00 security deposit and \$750.00 pet deposit. A copy of the signed tenancy agreement was provided as evidence. The parties have had previous tenancies, dating back approximately three years.

The tenancy agreement includes a two page addendum signed on June 3, 2014. The addendum allows the landlord to have access to an extension of the house so that renovations may be completed. The addendum indicates that when renovations are completed the landlord must give no less than 24 hours' notice verbally and in writing by email. The renovations have been on-going.

The addendum prohibits the tenant from topping any trees.

The landlord supplied a copy of a move-in condition inspection report completed on May 21, 2013. That report was completed prior to the current tenancy. The report indicates some deficiencies to the home.

The female landlord signed the tenancy agreement as agent for her father. On September 24, 2016 the agent purchased the property from her father and assumed full responsibility for the tenancy.

The landlord and the tenant agree that a one month Notice to end tenancy for cause issued on October 13, 2016 was served on the tenant indicating that the tenant was required to vacate the rental unit on November 30, 2016.

The reasons stated for the Notice to End Tenancy were that the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;*
- *put the landlord's property at significant risk; and*

That the tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property; and*

- *jeopardize a lawful right or interest of another occupant or the landlord; and*
- *That the tenant has caused extraordinary damage to the unit; and*
- *That the tenant has not done required repair of damage to the unit.*

The landlord set out two main issues in support of the reasons selected on the Notice ending tenancy. One, the tenant is operating a marijuana grow operation that is illegal and presents a risk to the landlord and the property. Second, the tenant has caused extraordinary damage and has not repaired that damage.

The landlord went to the property in June 2016 to complete an inspection in preparation for purchase. The landlord found the home to be in a state that required significant repair. The landlord has supplied multiple coloured and labelled photographs, detailing the marijuana grow operation and damage to the rental unit in June and over time, to November 10, 2016.

Photos taken just after the landlord purchased the property in September 2016 were submitted; some of which show:

- multiple wires, extension cords and panels installed on an interior wall of the workshop (the landlord said they were able to take this photo by placing the camera up to a hole in the workshop wall;)
- four growing trays full of small plants containing 50 plants per tray;
- a bag of marijuana found in the extension of the home;
- the large trailer that is used for growing marijuana;
- several wood shingles missing from the exterior of the home;
- three posts along the front porch that have been damaged by the tenants' dogs, with increased damage over time;
- mold along a window where the tenant had left a mattress;
- a large bone stuck into the siding of the home;
- a large hole dug through the drywall and insulation inside the main door of the home;
- front door trim destroyed by a dog;
- a cracked front door jamb;
- a broken door knob on the front door; additional damaged trim chewed by the dog;
- additional drywall damage located on November 10, 2016, by the front door;
- broken wood stove hearth bricks ;
- trim missing from around a door;
- trim placed in the wood stove;
- the kitchen prior to the rental,
- missing upper cupboard door and a broken cupboard door in the kitchen;
- duct tape used along the kitchen counter and stove to stop ants;

- master bedroom door frame broken;
- damage to drywall over the master bedroom door with trim hanging by a screw;
- damage to bathroom wall below the tub from lack of fan use and a failure to wipe up water;
- damage on the bathroom electric baseboard heater due to a failure to adequately clean;
- tool chest used to keep front door closed, which caused damage to the laminate flooring; and
- damaged laminate flooring caused by the toolbox.

There is no dispute that the tenant is growing marijuana on the rural property. The landlord stated that they have talked with the RCMP, Health Canada and obtained legal advice. The landlord has been told they should evict the tenant as soon as possible as the growing of marijuana could place their property at risk of civil forfeiture. The landlord was advised that if the tenant is growing more than allowed and profiting from the sale of drugs the landlord could be accused of benefitting by accepting rent from the tenant. The landlord acknowledges that the tenant has a licence to grow marijuana, issued by Health Canada. However, the landlord is affected as a result of a loophole in the licencing process. There was some sort of accident that has allowed the tenant to be issued a growing licence with the rental property listed as the address.

When the landlord went to the property in June 2016 they noticed lights on in the trailer and could smell the marijuana. The landlord went to the police. There is no dispute that the tenant has a large trailer which has been retrofitted to grow plants. A building referred to as a workshop is also used to grow plants and contains wiring installed by the tenant.

The landlord said that the wiring in the workshop poses a fire hazard and that condensation is forming in the building. The tenant is also preparing a second trailer that is on the property for growing, which would mean the tenant will grow even more plants. The landlord is uncomfortable on the property as a result of the grow operation and believes it places the landlords' health and safety in jeopardy. The landlord said even the tiniest threat to the security of their property is intolerable.

In relation to significant interference and unreasonable disturbance the landlord said that the tenant is prohibiting the landlord from accessing the extension. When the landlord arrives at the property the tenant yells at the landlord. The tenancy addendum allows the landlord to have access. On October 10, 2016 the landlord arrived to use the extension and the tenant turned off the power. The parties agree there is a single meter for power and that the tenant pays the bill. The landlord has offered to install a separate meter.

On October 11, 2016 the landlord arranged to have an electrician attend at the home to install a hydro meter. The tenant had locked the gate to the property and the electrician, aware there were some disagreements between the parties, refused to enter the property by going around the gate.

The landlord said that on September 24, 2016 they told the tenant to complete the repairs to the rental unit. When the landlord returned to the house on October 10, 2016 no repairs had commenced. Every time the landlord goes to the rental unit it is in worse condition. The repairs continued to be outstanding.

The landlord set out the details of the damage demonstrated in the photographs. There are several wood shingles that have been removed from the side of the house. The three posts along the front porch had been damaged, continually, since the inspection in June 2016. The wood shingles that cover the posts are destroyed. A bone was taken and pounded into the exterior siding of the home.

The front door was kicked in and the door and door jamb broken. Apparently this occurred one year earlier and the tenant failed to report the break-in. The tenant has then used a large tool box to secure the door, so that each time the door is opened the tool box drags across the laminate, which has ruined the flooring.

The tenants' dog dug a large hole into the drywall and through the insulation next to the front the door. Later the dog damaged the wall on the other side of the door. Trim around the doors has been destroyed by the dog; it has been chewed and some had been burned in the wood stove.

The tenant has broken bricks that form the hearth under the wood stove. It appears the tenant has been throwing wood onto the bricks. A kitchen cupboard door has been removed and another is broken. The tenant has placed duct tape along the edge of the counter and along the stove, which has caused damage to the wall. The master bedroom door frame is broken; it appears it has been forced open. The door and frame need to be replaced. The drywall over the master bedroom door has been ruined and the tenant has hung a piece of trim by a single screw.

The facing of the bathtub is curling as the result of negligence. The tenant has not used the fan or wiped up moisture. The heater in the bathroom is stained from urine.

The landlord had a contractor come to the home to provide an estimate for repairs. A November 15, 2016 estimate for repair was supplied as evidence. The estimate totals \$3,732.75 for repair of the cedar shingles, laundry room flooring, entry door and frame, damaged brick, repair of the kitchen door and cabinet, replace the bathroom heater, replace and repair the bedroom door and for repair of holes in the hallway, laundry room and around the door frame.

The tenant also topped three mature Douglas fir trees, without permission. A November 2016 arborist report indicates one of the trees is now likely dead.

The landlord said the tenant took a pool table that was in the landlords' portion of the home and put it outside. A photo of the damage table was submitted.

The tenant responded that he rented the property as an abandoned marijuana grow operation. The workshop has been used in the past as a grow operation and that the landlord knew the tenant would grow marijuana.

The tenant submitted a copy of a Health Canada *"Access to Cannabis for Medical Purposes Regulations – Registration Certificate"* that was effective September 27, 2016. The certificate expires August 31, 2017 and provides the rental unit address as the production site address. The tenant is to grow the marijuana indoors and may grow a maximum of 73 plants. The certificate provides no information as to how the rental unit address was approved by Health Canada or any other information that the property owners' permission was required. The tenant said that the growing activity is not illegal and is sanctioned by the Supreme Court of Canada.

The tenant said he not growing any more than is allowed by the certificate issued. The landlord also knew the tenant was growing plants and gave the tenant permission. The tenant said he did not have a licence at the time the landlord saw the plants in June, so he was not in breach of the licence. The tenant said he is not selling marijuana and is not placing the property at risk of civil forfeiture.

The tenant said there is no risk due to fire. The landlord has seen the set up and the tenant believes it is very safe. An electrician has not been to the property to inspect the wiring.

The tenant confirmed that the electrical work is not to code but the landlord saw the wires and only told the tenant to cover the ends of the wires. The tenant said that the workshop is a "tear down."

In relation to the allegation of interference, the tenant said he always locks the gate when he leaves. The electrician could have entered the property by going around the gate. The tenant confirms he did turn the power off on October 10, 2016. The tenant pays for the power, not the landlord.

In relation to the reason on the Notice of damage not repaired by the tenant, the tenant confirmed that his dogs have dug a hole, damaged the drywall and chewed trim. The tenant said that three days ago he fixed the hole by the front door and another hole next to the stove has been mudded. The tenant said that the dog damaged both sides of the door at the same time; there is no new damage. The tenant is "not sure" where the bone came from that was pushed into the exterior of the house.

The tenant has been offered the use of shingles that the landlord removed from the back of the home; he has not used them to repair the posts that have been damaged by his dogs.

The tenant said of all the repairs mentioned he was told that he and the landlord could make the repairs together. The tenant also said he had offered to make the repairs

before he moves out in the spring of 2017. In relation to the trim, shingles and drywall the tenant said he had agreed to this work or the cost could be deducted from the deposits. The tenant said that in February 2015 someone driving a stolen truck came through the gate. They kicked the door in and stole items. The tenant called the company who owned the truck; the company called the police. The tenant refused to testify as he did not want to be involved. The tenant did not report the damage to the landlord. The tenant now has a chain across the driveway, with a lock. The tenant said he would now give the landlord a copy of the key to that lock.

The tenant denied using the tool box to block the door but later testified that he accepts the laminate damage was caused by the tool box.

The tenant confirmed there are six broken bricks around the fireplace. The tenant does not throw wood on the bricks; but during the winter he chops kindling on them. The tenant said the quote for repair of the bricks is too high.

The tenant did use tape along the kitchen wall, to seal out ants. The tenant told the landlord about the ants and had said that the glue from the tape could be easily removed. The landlord said it was no problem and they could fix it together. The tenant removed the upper cabinet door as the hinge was failing, it is in a cupboard. The other cupboard door broke due to use.

The tenant agrees he damaged the drywall above the bedroom door as he improperly installed a chin-up bar. The bedroom door is not damaged but does need to be re-hung.

The tenant said the small vents in the bathroom window were plugged, so fresh air could not circulate in the room. The tenant said he had agreed he could repair the damage in the bathroom before he vacates in the spring of 2017. The tenant said the damage to the heater in the bathroom was pre-existing and rusted due to water.

The tenant confirmed that several shingles fell off the side of the house.

The tenant did remove the mattress from against the window and cleaned up the mold.

The tenant confirmed that he topped the trees in 2014; before this tenancy started. The tenant said the addendum to the tenancy agreement was signed after he cut the trees.

The pool table was given to the tenant and has been hauled to the dump.

The tenant said he has mutual agreement with the landlord that he will vacate in the spring of 2017. The landlord responded that there is no mutual agreement and that the fear of civil forfeiture does not allow the landlord to consider any agreement. The landlord said that the suggestion the tenant can grow marijuana on the property without permission is absurd. The landlord has clear proof the tenant is growing more than legally allowed. The tenant does not have permission to grow marijuana on the property and he has given false testimony that he does have permission.

The landlord said the deposits would not nearly cover the damage that has been caused and that they have not agreed the repairs could wait or that the costs could be deducted from the deposits. The landlord did not agree to assist the tenant with repairs.

The tenant has used snippets of conversation he has had with the landlord. The landlord had talked to the tenant about some lights in the shed. At the time there mass of wires present now was not there. The landlord said the tenant keeps saying he has permission to do what he is doing but it is the landlord who stands to lose, not the tenant.

The tenant stated the landlord enters the property without proper notice. The addendum signed by the parties provided the landlord with the right to enter and use the extension. The parties agreed that notice would be provided in the case of renovation work that would be completed.

The tenant wished to dispute a notice given, indicating the workshop will be demolished, with a subsequent rent reduction. It was explained that only matters set out on the application would be considered and that the application had been reviewed at the start of the hearing. The tenant did not include this matter on the application.

Analysis

The landlord has issued a one month Notice to end tenancy for cause, in accordance with section 47 of the Act. The tenant applied to dispute the Notice, as permitted by section 47(4) of the Act. The landlord then has the burden of proving the reasons on the Notice.

I have considered the reasons of significant interference and unreasonable disturbance and can find no basis to support the Notice for these reasons. The tenant pays the power costs and, as such, is not prohibited from turning the service off. If the electrician chose not to enter the property that can only be due to whatever information the landlord had given that person. The tenant did not thwart entry.

I have considered the alleged illegal activity and how it relates to the allegation of serious jeopardy, damage to the property and risk. I have also considered the growing of marijuana in relation to jeopardizing the health and safety and lawful right of the landlord and risk to the property.

I can find no reason to support the landlords' submission that the growing of marijuana is illegal. The tenant has a Health Canada certificate that includes the rental unit address as the permitted grow site. The RCMP has not seen fit to take any action, although this is not always necessary in proving illegal activity sufficient to end a tenancy. I would agree it defies logic that a tenant could obtain a certificate to grow marijuana on property not owed by the tenant. However, the landlord has not provided any evidence that the tenant obtained the certificate through some fraudulent means. One could assume that permission must be obtained from a property owner, but the landlord did not provide any evidence that would support such a requirement.

The landlord has not had the property inspected by an electrician. The tenant has confirmed the wiring is not to code and, from the photos supplied, one could assume that a risk of fire is present. However, the landlord did not supply any assessment by an electrician or any evidence, such as insurance provider statements indicating a risk exists. I must be convinced not on assumption, but evidence, that a risk exists.

Therefore, based on the evidence before me I can find no reason to uphold this Notice for the reasons set out above.

I have then turned to the reasons of extraordinary damage and a failure of the tenant to complete required repairs. Section 47(1)(f) and (g) of the Act provides details on the reason included on the Notice issued by the landlord:

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time

Section 32(3) of the Act provides:

(3) 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.

I find that the landlord did make a request to the tenant on September 24, 2016, when they were at the rental unit, that repairs be completed. The landlord said they had told the tenant to make the repairs. The tenant has not disputed this; the tenant has said that he was given until the spring of 2017 to complete the repairs and that the landlord had offered to assist. I can find no evidence that would support the tenants' submission. I find it highly unlikely the landlord would allow considerable repairs to wait at least six months, with the risk of additional damage occurring.

When the landlord was at the rental unit next on October 10, 2016 no repairs had been completed and no work had commenced. The tenant is required, pursuant to section 32(3) of the Act, to repair damage caused by the negligence of the tenant. In order to avoid eviction for cause the tenant is required to make those repairs; particularly when given notice by the landlord, as occurred in September 2016.

There is no dispute that the tenant has caused damage to the rental unit. The question is whether that damage is extraordinary. Extraordinary damage is damage of a greater degree than damage that exceeds reasonable wear and tear, and would be caused by willful or negligent acts of the tenant.

From the evidence before me I find that the damage caused to the rental unit is far beyond what any reasonable person would accept as damage caused by wear and tear. There is no dispute that the tenant has stood by and allowed his dogs to destroy trim, walls and exterior posts on the porch. The tenant has broken bricks by chopping kindling on them; an activity I find demonstrates a complete disdain for the landlords' property. Allowing a tool box to repeatedly damage laminate flooring, and by not taking steps to stop the dogs from destroying the landlords' property I find that the tenant has caused extraordinary damage to the landlords' property through his own negligence.

There is no dispute that the tenant was aware of the landlords' expectation the repairs be completed. I find that the tenant was informed no later than September 24, 2016 that he must complete the repairs. By October 10, 2016 the tenant had not taken any steps to commence repairs. I find that the tenant had been given a reasonable period of time to at least show some sign of making repairs; but he did not.

I have rejected the tenants' testimony that the landlord was willing to assist in making repairs, that the landlord did not expect the tenant to complete repairs until the spring of 2017 or that the tenant could cover the cost of repair with the deposits. The landlord was not required to warn the tenant, but the tenant was given instructions to make the repairs. I find that the tenant ignored that warning. The landlord then issued the Notice to end tenancy for cause. While the tenant said he has fixed two holes in the walls, just three days before the hearing, I find that effort is insufficient to counter the Notice issued on October 13, 2016.

Therefore, I find that the landlord has shown sufficient cause to support ending the tenancy pursuant to sections 47(f) and 47(g) of the Act. I find that the tenant has not complied with section 32(3) of the Act by repairing damage caused through his own negligence, within a reasonable period of time, in breach of section 32(3) of the Act. Further, I find that the damage caused is extraordinary.

Therefore, I find that the tenancy has ended on the effective date of the Notice; November 30, 2016.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

There is no evidence before me to support issuing an order restricting the landlords' right to enter the residential property and the extension. Access is set out in the addendum signed by the parties.

As the landlords' application has merit I find pursuant to section 72 of the Act that the landlord is entitled to retain the \$100.00 filing fee from the \$700.00 security deposit.

The landlord will then be holding a security deposit in the sum of \$600.00 and pet damage deposit in the sum of \$750.00.

The tenants' application is dismissed.

Conclusion

The landlord is entitled to an order of possession.

The landlord may deduct the \$100.00 filing fee from the security deposit.

The tenants' application is dismissed.

This decision is final and binding and 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: December 12, 2016

Residential Tenancy Branch