



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, OLC, MND, MNSD, MNDC, MNR, LRE, and 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 for money owed or compensation for damage or loss, for a monetary Order for unpaid rent of utilities, for a monetary Order for damage, to retain the security deposit, and to recover the filing fee from the Tenant for the cost of filing an Application for Dispute Resolution.

The female Landlord stated that on February 17, 2017 the Landlords' Application for Dispute Resolution, the Notice of Hearing, the Monetary Order Worksheet, and one page of evidence submitted to the Residential Tenancy Branch on February 27, 2017 were personally served to the Tenant. The Tenant stated that these documents were posted on his door on February 17, 2017. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order suspending or setting conditions on the Landlords' right to enter the rental unit, and to recover the fee for filing an Application for Dispute Resolution. The Tenant has only named the male Landlord in his Application.

The Tenant stated that on February 15, 2017 the Tenant's Application for Dispute Resolution, the Notice of Hearing, and three pages of evidence submitted with the Application were personally served to the Landlord. The female Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 23, 2017 the Tenant submitted 15 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were placed in the Landlord's mail box on February 23, 2017. The female Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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

Issue(s) to be Decided

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

Is the Landlord entitled to compensation related to a damaged shower faucet?

Is the Landlord entitled to retain the security deposit?

Is there a need to issue an Order suspending or setting conditions on the Landlords' right to enter the rental unit?

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on August 01, 2016;
- they did not enter into a written tenancy agreement; and
- the Landlords served the Tenant with a One Month Notice to End Tenancy, dated February 10, 2017.

The One Month Notice to End Tenancy for Cause, which was submitted in evidence, declared that the tenancy was ending because:

- the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant or a person permitted on the property has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to, damage the landlord's property;
- the tenant or a person permitted on the property has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of the landlord or another occupant; and
- the Tenant has not completed required repairs.

The Landlords are attempting to end this tenancy, in part, because they believe the Tenant has permitted smoking in the rental unit. The female Landlord stated that she has smelled smoke in the unit and that the Tenant's girlfriend told her she had been smoking in the unit. The Tenant stated that nobody has ever smoked inside the rental unit.

The Landlords are attempting to end this tenancy, in part, because they believe the Tenant did not report a leaking tap in a timely manner. The male Landlord stated that they notice they had a reduced amount of hot water and, after a period of several days, he asked the Tenant if he was also experiencing a problem, at which point the Tenant advised him the shower was leaking. He stated that when he viewed the tap water was leaking from in such a manner that a 5 gallon bucket would be filled in 15 minutes.

The Tenant stated that after having a shower on January 19, 2017 he noticed the tap was leaking a small amount; that he was away from home for several days; when he returned home in the early morning hours of January 22, 2017 he noticed the tap was leaking extensively; that he did not report the leak to the Landlords at that time because it was very early in the morning; and that the male Landlord asked him about the leak later in the day on January 22, 2017.

The Landlords are attempting to end this tenancy, in part, because the Tenant has refused to pay for repairing the leaking tap. The male Landlord stated that he believes the Tenant should pay for the cost of replacing the tap because:

- before he retired he was a plumber for 50 years;
- in his entire career as a plumber he has never heard of a tap/lever leaking as a result of a worn part, such as a washer;
- the tap was approximately 18 years old; and
- he thinks the tap leaked because excessive pressure was applied to the handle.

The Tenant stated that he did not apply excessive pressure to the handle; he does not know why the tap was leaking; and he assumes it simply failed due to the age of the tap.

The Landlords are attempting to end this tenancy, in part, because the Tenant contacted the police on two occasions. The female Landlord stated that on both occasions the Tenant reported that the male Landlord entered the unit without proper authority, which she stated is not true.

The Tenant stated that he contacted the police on February 02, 2017 because the male Landlord was angry at the Tenant for not agreeing to pay for repairing the shower faucet and he refused to leave the rental unit when he was told to do so by the Tenant. The male Landlord denies this allegation.

The Tenant stated that he contacted the police on February 04, 2017 because the male Landlord entered the rental unit without proper authority on February 04, 2017. The male Landlord denies this allegation.

The Landlords are attempting to end this tenancy, in part, because a person who lives on the neighbouring property has complained that the Tenant is discarding his cigarette butts on their property.

The Landlords applied for compensation for the cost of repairing the shower tap, which included compensation for time spent replacing the tap and the cost of supplies.

The Landlords applied for compensation for costs they incurred as a result of hot water leaking from the tap, which they contend were incurred because the leak was not reported in a timely manner.

The Tenant is seeking an Order suspending or setting conditions on the Landlords' right to enter the rental unit. The Tenant is seeking this Order because he alleges that on February 04, 2017:

- the male Landlord entered the rental unit, which was unlocked, without knocking;
- neither he nor his girlfriend opened the door for the Landlord, although they were both in the unit; and
- the Landlords did not give him written or verbal notice of their intent to enter the unit on February 04, 2017.

The male Landlord stated that:

- on February 04, 2017 he wanted to enter the unit to complete the repairs to the shower tap;
- he knocked two times on the door;
- he tried the handle to see if it was locked;
- the Tenant's girlfriend opened the door just as he was trying the handle; and
- he entered the unit without an invitation from either the Tenant or his girlfriend.

The female Landlord stated that she spoke with the Tenant on February 03, 2017 at which time he told her he understood the tap repair would be completed on February 04, 2017. The Tenant denies this allegation.

Analysis

Section 47 of the *Act* authorizes landlords to end a tenancy for a variety of reasons. The burden of providing that a landlord has grounds to end a tenancy pursuant to section 47 of the *Act* rests with the landlord.

When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities. It is important to note that in a dispute such as this, the testimony of the Landlord and the Tenant does not stand on equal ground, as the Landlord carries the burden of proof. When the evidence consists of conflicting and disputed verbal testimony, the party who bears the burden of proof will not likely succeed.

I find that the Landlords have submitted insufficient evidence to establish that anyone was smoking inside the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlords' submission that the Tenant's girlfriend was smoking in the rental unit or that refutes the Tenant's testimony that nobody was smoking in the rental unit. As the Landlords have failed to establish that anyone was smoking inside the rental unit, I find that they are unable to end the tenancy on the basis of this allegation.

I find that the Landlords have submitted insufficient evidence to establish that the Tenant did not report the leaking shower tap/lever in a timely manner. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that the tap was not leaking badly when he left the unit on January 19, 2017. I therefore find it reasonable that the leak was not reported immediately to the Landlords, given that it was simply leaking into a drain.

In concluding that there was insufficient evidence to establish that the Tenant did not report the leaking tap in a timely manner I was further influenced by the absence of evidence that refutes the Tenant's testimony that it was too early in the morning to report the leak when he noticed how much it was leaking when he returned on January 22, 2017. I find this explanation to be plausible and that a significant amount of hot water would be wasted during that period if it was filling a 5 gallon bucket in 15 minutes.

As the Landlords have failed to establish that the Tenant did not report the leaking tap in a timely manner, I find that they are unable to end the tenancy on the basis of this allegation.

I find that the Landlords have submitted insufficient evidence to establish that the Tenant damaged the shower tap by applying excessive force to the lever/handle. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the Tenant's testimony that he did not apply excessive force or that corroborates the male Landlord's speculation that someone applied excessive force to the lever/handle.

On the basis of the male Landlord's testimony that the tap was approximately 18 years old, I find it highly likely that the tap leaked due to normal wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate that male Landlords' submission that it is unlikely that a tap/lever would leak as a result of a worn part, such as a washer, as that is entirely inconsistent with my personal experience and with my experience with the Residential Tenancy Branch.

Section 32(4) of the *Act* stipulates that a tenant is not obligated to make repairs for reasonable wear and tear. As the Landlords have failed to establish that the shower tap leaked as a result of anything other than normal wear and tear, I find that the Tenant was not obligated to repair the leaking tap/lever. As the Tenant was not obligated to repair the leaking tap/lever, I find that the Landlords do not have the right to end the tenancy because the Tenant did not repair that item.

I find that the Landlords have submitted insufficient evidence to establish that the Tenant did not have the right to contact the police on February 02, 2017 and February 04, 2017. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the male Landlord's testimony that he did not refuse to leave the rental unit when asked to do so and he did not enter the unit without proper authority or that refutes the Tenant's testimony that the male Landlord committed those breaches of the *Act*. As the Landlords have failed to establish that the Tenant did not have

grounds to contact the police on two occasions, I find that they are unable to end the tenancy on the basis of those police reports.

Section 47(d)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant unreasonably disturbs another occupant or the landlord of the residential property. Even if I accepted the Landlords' submission that a person who lives on a neighbouring property was being disturbed by cigarette butts being discarded by the Tenant, I could not end the tenancy on that basis because the *Act* only authorizes a landlord to end a tenancy when another occupant or the landlord of the residential property is being disturbed. The *Act* does not authorize a landlord to end a tenancy when another occupant or the landlord of an adjacent property is being disturbed.

I find that the Landlords have failed to establish grounds to end this tenancy pursuant to section 47 of the *Act*. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy, dated February 10, 2017, and I dismiss the Landlord's application for an Order of Possession.

As the Landlords have failed to establish that the shower tap leaked as a result of anything other than normal wear and tear, as has been previously discussed, I dismiss the Landlords' application for cost associated to repairing the tap.

As the Landlords have failed to establish that the Tenant did not report the leaking tap within a reasonable amount of time, as has been previously discussed, I dismiss the Landlords' application for costs they incurred as a result of hot water leaking from the tap.

I find that the Landlords have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee paid for filing an Application for Dispute Resolution.

As the Landlords have failed to establish a monetary claim, I dismiss their application to retain any portion of the Tenant's security deposit.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

On the basis of the Landlord's testimony that he entered the rental unit on February 04, 2017 without an invitation from either the Tenant or the Tenant's girlfriend, I find that the male Landlord did not have the right to enter the rental unit on that date pursuant to section 29(1)(a) of the *Act*.

In the absence of any evidence to show that the Landlords gave the Tenant written notice of their intent to enter the unit on February 04, 2017, I find that the male Landlord did not have the right to enter the rental unit on that date pursuant to section 29(1)(b) of the *Act*. Even if I accepted the female Landlord's testimony that on February 03, 2014 the Tenant told her he knew the repairs were being completed the next day, the Landlord did not have the right to enter the rental unit to complete those repairs without prior written notice or without a verbal invitation at the time of entry.

In the absence of any evidence to show that the Landlords provided housekeeping or related services as a term of the tenancy agreement, I cannot conclude that the male Landlord had the right to enter the rental unit on February 04, 2017 pursuant to section 29(1)(c) of the *Act*.

In the absence of any evidence to show that the Landlords has an order of the director authorizing the entry, I cannot conclude that the male Landlord had the right to enter the rental unit on February 04, 2017 pursuant to section 29(1)(d) of the *Act*.

In the absence of any evidence to show that the rental unit was abandoned, I cannot conclude that the male Landlord had the right to enter the rental unit on February 04, 2017 pursuant to section 29(1)(e) of the *Act*.

In the absence of any evidence to show that there was an emergency in the rental unit on February 04, 2017, I cannot conclude that the male Landlord had the right to enter the rental unit on February 04, 2017 pursuant to section 29(1)(f) of the *Act*.

I am satisfied that the male Landlord entered the rental unit without proper authority on February 04, 2017 and I therefore Order both Landlords to strictly comply with section 29(1) of the Act if they wish to enter the rental unit in the future.

I find that the Tenant's Application for Dispute Resolution has merit and that he is entitled to \$100.00 in compensation for the fee paid to file an Application.

Conclusion

I grant the Tenant's application to set aside the One Month Notice to End Tenancy, dated February 10, 2017, and I dismiss the Landlord's application for an Order of Possession. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce the monetary Order through the Province of British Columbia Small Claims Court the Tenant may deduct the amount due from one monthly rent payment, pursuant to section 72(2) of the *Act*.

The Landlords have failed to establish a monetary claim and I dismiss their application for a monetary Order and to retain the security deposit.

Dated: March 13, 2017

Residential Tenancy Branch