



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNL, CNR, MNDC, OLC, PSF, AAT

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, present sworn testimony and make submissions. The landlord was represented by her son, HC (the "landlord") who acted as her agent and interpreter.

As both parties were in attendance I confirmed that there were no issues with service of the materials. The tenant confirmed receipt of the landlord's 2 Month Notice, two 10 Day Notices, application for dispute resolution, amendments to the application and evidence. The landlord confirmed receipt of the tenant's two applications for dispute resolution, amendments to the applications, and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective notices, applications, amendments and evidence.

Issue(s) to be Decided

Should any of the landlord's Notices to End Tenancy be cancelled? If not is the landlord entitled to an Order of Possession?

Is either party entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the landlord be ordered to provide services or facilities required by law? Should the landlord be ordered to provide access to the rental unit to the tenant or the tenant's guests?

Is either party entitled to recover the filing fee for their applications from the other?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began on April 7, 2017. The monthly rent is \$1,050.00 payable on the first of each month. A security deposit of \$525.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The rental unit is a two-bedroom suite in a detached home. The landlord and her family occupy the upper level and another tenant occupies a separate one-bedroom unit.

Rent in the pro-rated amount of \$840.00 was paid for the month of April, 2017. Prior to the tenant moving into the rental unit the landlord performed some renovations to the flooring of one of the bedrooms in the rental suite. The renovations took place from April 14 to April 16. The tenant said that during this time she was unable to access the rental unit at all. The tenant said that she was intending to move some of her belongings into the rental unit during this time but her move was delayed due to the lack of access.

The landlord served the tenant with the 2 Month Notice on June 22, 2017 by registered mail. The landlord indicated that the landlord or a close family member intends to occupy the rental unit. The tenant disputed that the 2 Month Notice was issued in good faith. She said that the timing of the Notice coincides with her disputes with the landlord and believes it to be retaliation.

The landlord testified that the 2 Month Notice was issued as the landlord intends for the landlord's spouse's mother to occupy the rental unit and live closer to the family. The landlord testified that the mother is currently living by herself but as her health is deteriorating the family wishes her to be closer. The landlord submitted into written evidence medical notes as evidence of the mother's current health. The landlord testified that they want the mother to occupy the two-bedroom suite as they believe it may be necessary for a family member or live-in caregiver to reside with the mother. The landlord testified that the mother has not given notice at her current residence as they wanted to ensure that the rental unit was vacated. The landlord chose to enter into a month-to-month tenancy instead of a fixed term tenancy as they wanted the option of ending the tenancy for landlord's use when the mother's health necessitated.

The parties agreed that the tenant has not paid any rent for the months of July, August and September, 2017.

The tenant seeks to recover the equivalent of two month's rent, \$2,100.00 and her estimated moving costs of \$835.00.00. The tenant testified that she has felt intimidated and threatened by the landlord throughout the tenancy. The tenant said that she would not have gone to the expense of moving into the rental unit had she known at the outset that the tenancy would end so quickly. The tenant testified that she has not been allowed reasonable access to the laundry facilities. The tenant said that the landlord only allows her access at their convenience and only once a week. The tenant said that the oven in her rental unit has not been working since moving in and the landlord has not repaired or replaced it. The tenant complained that the landlord has changed the wi-fi password and she has been unable to use the household internet since about August 1, 2017. In addition, the tenant testified in regards to a number of repairs and cleaning that is required around the rental unit including mould in the suite, a broken fence and blinds. The tenant submitted into written evidence copies of her letters, emails and text messages sent to the landlord complaining about the apparent deficiencies.

The landlord testified that they have responded to the tenant's requests in a reasonable manner and timeframe. The landlord said that the building shares a laundry machine and the tenants are allowed access as part of the tenancy agreement. Because the laundry machine is located in the landlord's suite the tenant must first request access from the landlord. The landlord said that for security reasons they cannot leave their unit unlocked for the tenant to access whenever they choose. The landlord said that they offered the tenant exclusive use of a laundry machine they would purchase and install in the tenant's suite but the tenant refused that option. The tenant said that the rental unit does not have enough space to install a laundry machine.

The landlord said that they have purchased a replacement oven at the tenant's request and it is available but the tenant has refused to cooperate in arranging a time for the installation. The landlord said that they took action after the tenant alerted them of the deficiency in or about May, 2017. The landlord said that any delays were caused by the tenant not providing access to the rental unit to inspect the oven and thereafter not providing access to the unit for

installation. The landlord submitted into written evidence receipts showing that the oven was purchased on June 25, 2017. The landlord testified that there were some delays from the appliance retailer but the oven has been available since August 3, 2017. The landlord submitted into written evidence copies of correspondences sent to the tenant inquiring about her availability. The landlord said that the tenant did not reply and has been unresponsive about providing her availability.

The landlord said that they were informed by the tenant that the tenant had access to her own internet services and did not require the shared household wi-fi. Nevertheless, they provided the tenant with the password should she require it.

The landlord said that they have attended to repairs and maintenance of the rental unit and shared amenities when they have been informed by the tenant. The landlord submitted into written evidence copies of receipts for repairs and replacement parts and photographs of the completed repairs.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlord intends in good faith that the landlord's close family member intends to occupy the rental unit.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Policy Guideline 2 reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find on a balance of probabilities that I am satisfied with the landlord's evidence that they intend for the parent of the landlord's spouse, a close family member, to move into the rental unit. The landlord provided consistent, cogent testimony regarding the family's intention to have the landlord's mother-in-law move into the rental unit. The landlord provided evidence of the mother-in-law's declining health as the reason they wish to have her occupy the rental unit. The landlord adequately addressed the reason why the two-bedroom rental unit is required. The landlord testified that they want the two bedroom suite as they believe that a live-in caregiver, whether it is a family member or a health professional, may be necessary. They have addressed the concerns that there are ulterior motives or that they may not use the rental unit for the expressed reasons. They have given reasonable evidence that they entered into a month-to-month tenancy specifically so that they would be able to take possession of the rental unit in a reasonable time. I find the landlord's expressed intention and conduct to be consistent. While I accept the tenant's evidence that there has been some conflict between the parties, I find that the landlord's evidence that the 2 Month Notice was not issued in response to be convincing. I find that on a balance of probabilities I am satisfied the landlord will use the rental unit for the purpose expressed.

Therefore, I find on a balance of probabilities that the landlord intends for a close family member, the mother of the landlord's spouse, to occupy the rental unit. I dismiss the tenant's application to cancel the landlord's 2 Month Notice.

Section 55(1) of the Act reads in part as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

As I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the effective date of the 2 Month Notice has passed, I issue an Order of Possession effective two days after service.

As I am granting an Order of Possession pursuant to the 2 Month Notice I find it unnecessary to make a finding regarding the multiple 10 Day Notices that have been issued or the tenant's applications to cancel each of them.

The parties agree that the tenant has not paid the rent for the months of July, August, or September. Section 51 of the *Act* sets out the compensation due to a tenant who receives a notice to end tenancy for the landlord's use. The tenant is entitled to receive from the landlord an amount that is the equivalent of one month's rent or withhold the amount from the last month's rent. I find that the tenant was not obligated to pay rent for the month of August, 2017.

I accept the evidence of the parties that the tenant has not paid rent for July or September, 2017. Accordingly I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$2,100.00 for those months.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the refund of two month's rent and estimated cost of moving that the tenant claims is not a loss arising from the landlord's violation of the Act, regulations or the tenancy agreement. The tenant occupied the rental unit during the tenancy and I find there is insufficient evidence to support the tenant's claim for the equivalent of two month's rent. The tenant knew that this was a periodic tenancy at the outset. Any tenancy may be ended by either party in accordance with the *Act*. I find that the tenant's evidence consists of subjective complaints about her interaction with the landlord. As Section 51 of the *Act* sets out the compensation due to a tenant who is served a notice to end tenancy for landlord's use, I find there is no evidentiary basis that the tenant's moving costs is a loss that should be further compensated by the landlord. I dismiss this portion of the tenant's claim.

The parties agree that the rental unit was undergoing some renovations for three days in the month of April, 2017. The parties agree that rent in the amount of \$840.00 was paid for that month for a tenancy beginning on April 7, 2017. The landlord testified that only one room was unusable during the renovation work. The tenant said that she was told that she could not

access the rental unit at all. I find the tenant's evidence to be more convincing. The parties said that the renovations that were being performed involved flooring of one of the rooms. Given the nature of the renovations even if the work was primarily being done to only one room I find it reasonable that there would be industrial materials, debris and noise throughout the rental unit making it hazardous to occupy. I accept the tenant's evidence that the rental unit could not be occupied for three days in April, 2017. That the tenant had not moved into the rental unit at that time is immaterial, the tenant had the right to exclusive occupancy of the rental unit for the month as she had paid rent. She was denied that right due to the landlord's renovations. The tenant claims the amount of \$229.07 which includes the pro-rated rent for three days of \$105.00 and the \$124.07 cost of a car share vehicle. I find that there is insufficient evidence that the car share vehicle is a loss attributable to the tenant's lack of access to the rental unit for three days. Therefore, I dismiss that portion of the tenant's monetary claim. I issue a monetary award in the tenant's favor in the amount of \$105.00 for the three days rent equivalent.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

The tenant testified that the landlord provides limited access to the clothes washer, that the oven in the rental unit does not work and that she has been denied internet service since the start of August, 2017. In addition the tenant said there were numerous general maintenance issues that have not been addressed. While I find that the tenant's ability to enjoy the rental unit have been affected by the lack of amenities I do not find that there is sufficient evidence to conclude that the landlord has breached the tenant's right to quiet enjoyment through their inaction or action.

Nor do I find that there has been a reduction in the value of the tenancy pursuant to section 67 or 65 of the *Act*.

The majority of the written evidence submitted by the tenant consists of email correspondence from the tenant to the landlord. I do not find this evidence to be particularly persuasive. I find that the tenant's continued complaints are insufficient evidence that there has been a breach of the tenant's right so as to give rise to a claim for loss of quiet enjoyment.

I accept the evidence of the parties that the tenant had access to the laundry facilities. The tenant said that she was only allowed limited use and not always at the times that she wanted. She testified that because of her family she required the laundry machine more frequently and found the landlord's control of the facilities to be restrictive. I find that restricting use to a shared facility to be a reasonable limitation. While there is no written tenancy agreement the advertisement for the rental unit provides that the tenancy includes "shared laundry". I find that when an amenity is shared it implies that reasonable limits will be set on a tenant's access to it. I do not find the landlord was unreasonable in setting limits on the frequency and times when the tenant could access the laundry. Furthermore, I accept the evidence of the parties that the landlord offered the tenant the exclusive use of a laundry machine which could be installed in the rental unit. The tenant testified that she refused as it would take up space in the rental unit. I find that any inconvenience the tenant experienced arises from her choice to refuse the laundry machine.

I accept the landlord's evidence that they have taken reasonable steps to address the tenant's numerous complaints and requests. I accept the undisputed evidence of the landlord that replacement appliances have been prepared and are available but the tenant has refused to arrange a time for installation. The tenant said that the landlord should stop attempting communication and simply make the necessary repairs and installations. I do not find the tenant's position to be reasonable. The landlord's right to enter a rental unit is restricted in accordance with the *Act*. The tenant cannot demand that the landlord make repairs to the rental unit without following the provisions of the *Act*. I find that the landlord has taken measures in response to the tenant's claims for repairs that are reasonable under the circumstances. I find that there is insufficient evidence to show that the tenant has suffered any loss or damages as a result of the landlord's actions or negligence. I find that the majority of the issues the tenant raises are a result of the tenant's refusal to deal with the landlord. Consequently, I dismiss the tenant's application under these headings.

As I primarily find in favor of the landlord's application the landlord is entitled to recover the \$100.00 filing fee for their application from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$525.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favor.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,570.00 under the following terms:

Item	Amount
Unpaid Rent July, 2017	\$1,050.00
Unpaid Rent September, 2017	\$1,050.00
Less 3 Day Rent Reduction April 14-16	-\$105.00
Less Security Deposit	-\$525.00
Filing Fee	\$100.00
TOTAL	\$1,570.00

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the tenant's application is dismissed.

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: September 22, 2017

Residential Tenancy Branch