



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Application made December 19, 2017: OLC; LRE; LAT; FF
amended January 9, 2018, to add: CNC
amended January 19, 2018, to add: MNDC

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Cause issued January 3, 2018 (the "Notice"); compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order suspending or restricting the Landlord's right to access the rental unit; authorization to change the locks at the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony. The Tenant testified that she served the Landlord with her initial Application and Notice of Hearing documents on December 22, 2017, by posting the documents through the Landlord's door. The Tenant testified that likewise, she posted her amendments to her Application through the Landlord's door on January 9, 2018, and January 21, 2018, respectively. There were no issues identified by either party with respect to service of the other's electronic evidence.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy?
Is the Tenant entitled to compensation for harassment?
Is the Tenant entitled to the other Orders sought on her Application?

Background and Evidence

Both parties provided a large quantity of electronic evidence. The Tenant provided 106 pages of documents, much of which was in the form of written submissions. The Landlord provided 37 pages, then revised her evidence to include another 30 pages along with the original 37 pages, then again revised her evidence to add an additional 77 pages, and revised it once again to amend some of the documents and to add another page (for a total of 145 pages, once all

amendments had been made). Much of the Landlord's documents were also in the form of written submissions. The Landlord also provided 34 photographs in evidence. Due to the sheer volume of documents, I invited both parties to provide me with oral testimony with respect to the contents and to refer to their electronic evidence where appropriate.

The parties were each given equal opportunity to provide me with their submissions. In this Decision, I have recorded the relevant testimony only.

The rental unit is the basement suite of the Landlord's residence. This tenancy began on November 1, 2012. A copy of the tenancy agreement signed by the parties on October 12, 2012 was provided in evidence. At the beginning of the tenancy monthly rent, which includes utilities, was \$990.00. Rent is due on the 1st day of each month. The Tenant paid a security deposit in the amount of \$495.00 and a pet damage deposit in the amount of \$495.00 on October 25, 2012. The pet damage deposit has since been returned to the Tenant because the Tenant chose not to have a pet living at the rental unit.

A new tenancy agreement was signed by the parties on May 1, 2015, which indicates that monthly rent was \$1,015.00, due on the first day of each month. Rent includes utilities. Rent was increased again on December 1, 2017.

The Landlord issued a Notice to End Tenancy for Cause on January 3, 2018. A copy of the Notice was provided in evidence. The Tenant received the Notice on January 4, 2018, which was posted to the Tenant's door on January 3, 2018. The Notice provides the following reason(s) for ending the tenancy:

REASONS FOR THIS ONE MONTH NOTICE TO END TENANCY (check all boxes that apply):	
<input type="checkbox"/>	Tenant is repeatedly late paying rent.
<input type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site.
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply): <ul style="list-style-type: none"><input checked="" type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.<input checked="" type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.<input checked="" type="checkbox"/> put the landlord's property at significant risk.

The Landlord gave the following relevant testimony:

The Landlord testified that the Tenant:

1. refuses to close her window during the cooler/cold months of the year, which increases the electricity bill for the Landlord and therefore unreasonably disturbs the Landlord;
2. disturbs the Landlord's sleep by making excess noise after midnight, which unreasonably disturbs the Landlord;
3. fails to regularly clean the lint from the dryer, which is a fire risk and therefore seriously jeopardizes the health or safety of the Landlord and puts the Landlord's property at significant risk;

4. constantly and unnecessarily complains about issues (mail delivery, security lighting, touch-up painting, internet access, washing machine repairs) which unreasonably disturbs the Landlord; and
5. refuses the Landlord's requests for access to the rental unit, which is a breach of the Act.

With respect to the above oral testimony, the Landlord referred to pages 6, 7, 8, 21, 25 – 29, 33 – 42, 46 – 55, 57, 58, 60 – 99, 105 – 111, 113 – 116, and 123 – 131 of her electronic evidence. She also referred to the photographs which were electronically provided.

With respect to the Tenant's refusal to provide access, the Landlord testified that she wished to access the rental unit in order to inspect the hot water heater. The Landlord wrote to the Tenant on November 30, 2017, outlining several concerns that she had. On page 2 of the letter, she notified the Tenant that the hot water was burning the Landlord's hands and that she would be accessing the rental unit on December 4, 2017 at 11:00 a.m. in order to turn down the hot water. (A copy of this November 30 letter was provided in evidence by the Tenant). The Landlord stated that the Tenant responded to the Landlord's letter by providing the Landlord with a letter dated December 1, 2017. Both parties provided a copy of this letter, which provides:

Re: Tenants Rights and Landlord's right to enter rental unit restricted

Please be advised, as your tenant, I do not allow my landlord access to enter my suite on any basis. Please respect my personal privacy as your tenant.

On the occasion, the landlord provides proper notice for a reasonable purpose to enter the rental unit; I will only grant such a request pursuant under section 29 of the *Residential Tenancy Act*.

Furthermore, whenever entry request is granted, **I must be present for each and every Landlord entry I may approve.**

Under no other circumstances is my landlord to enter the rental without my permission and personal presence unless the entry is due to an emergency to protect life or property.

Please respect my personal privacy and my right to protect my own personal property.

The Landlord testified that the Tenant also denied her access to the rental unit on December 9, 2017 and January 4, 2018. The Landlord provided copies of her written notice of seeking access to the rental unit, which she stated were hand delivered to the Tenant.

The Landlord testified that on December 26, 2017, she received a letter from the Tenant alleging that on December 24, 2017, the Landlord had deliberately terminated the Tenant's access to the internet and changed the password. The Landlord denied making any changes to her internet account. The Landlord stated that the internet was not working on December 24, 2017, so she called the internet provider on her cell phone while her son worked on trying to fix the connection with the modem. While the Landlord was on hold, her land line rang and it was

the provider calling to advise her that her Tenant had called to complain that the internet was not working. The provider wanted to confirm that the Landlord had not made any changes to the account. The Landlord confirmed with the provider that she had not made any changes.

The Landlord testified that because of the seriousness of the Tenant's allegations, the Landlord wrote to the provider and obtained copies of records of the Landlord's communications with the provider. Exerpts from those records include:

Agent: It's okay. It's on the call here. I found the call from December 24th.

Client: From myself?

Agent: From (third-party identifier removed). (third-party identifier removed) not verified, calling about high speed and TV not working. It started today, there has been no changes made, customer does not have an access to the modem, and gave landlord's number Shelly.

Client: That's me.

Agent: H-hm. Called back landlord through the CBR provided. Cannot get a hold of client.

Client: Well, I spoke with them.

Agent: And then later on it says called client's single line, so home phone, spoke to Shelly --

Client: That's correct.

Agent: -- client advises that she's talking to a technician, there has been no changes made. Called back tenant to inform landlady currently speaking to a tech and no changes made.

Client: Right.

Agent: *So, you're thinking that that this – there was something that was said on this call that –*

Client: Right.

Agent: *Why don't we pull the call? We could pull the call and review it and see what was said.*

Client: Okay, so you've just basically told me the conversation with my tenant. Okay. And this is what she said to me in writing here.

Agent: *H-hm.*

Client: Okay. She said that she contacted TELUS and that TELUS had told her that I had switched off my access at the modem, which disallowed service to her. Is that true?

Agent: *Not according to the notes.*

Client: Did TELUS tell her that?

Agent: *Not according to the notes. That's what I'm trying to say, not according to the notes. But we have the ability to listen to the call. The diary notes I read out to you.*

Client: Okay.

Agent: *So not according to the notes. But, we do have the ability to listen to that call.*

Client: Okay.

Agent: *Just to see if there was something that was said that, you know, that raises – now what is her problem?*

Client: <Over talk 00:15:37>. Okay, just let me continue and then we can carry on with that conversation.

Agent: *Right.*

Client: Okay. She is saying that TELUS confirmed that after they had called me, Shelly, the landlord, about the terminated service, that I immediately restored television, but I restricted the password to the internet. Did TELUS confirm to (third-party identifier removed) that I immediately restored her viewing of the television and restricted by changing the password to the internet? Did TELUS tell her that?

Agent: *Not according to the notes.*

Client: Okay.

Agent: *I read the diary notes to you.*

Client: Okay.

Agent: *It doesn't indicate any of that.*

Client: Okay. She also goes on to say that as of December 26th, her internet service remains terminated.

Agent: *As of the 26th?*

Client: Yes. We have internet no problems.

Agent: *Yeah, I see the service is all active.*

Client: Our password is the same?

Agent: As of the 26th?

Client: Yes. We have internet no problems.

Agent: Yeah, I see the service is all active.

Client: Our password is the same?

Agent: H-hm.

Client: As a matter of fact, I specifically said to my son for him to talk to TELUS, I think we both were talking to TELUS, and I wanted the same passwords, because it's a hassle if you change your password. So, what I do want to share with you, is after receiving this letter yesterday, I wanted to read to you the letter that I sent to her very quickly yesterday. It says, "(third-party identifier removed), <indiscernible 00:17:58> in your December 26th letter, I spoke with TELUS on December 24th, and I did not switch off your access; TELUS reset the modem and the password is the same. Our internet is fine and TELUS

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TELUS

Recorded Conversation Transcript

Account No. [REDACTED]

confirmed that on the 24th. Then I go on to say try re-entering the password again. Please confirm if that has worked, as TELUS has said that everything is great."

So that's what I sent to her yesterday. So, can you tell if – I don't undst- what I think could have happened is that she maybe didn't put the correct password in. And if she's not using the correct password, all she has to do is try it again, or if she's forgotten what it is, she can ask me for it again. Can you see any other reason why she would not have internet service?

The Landlord stated that on December 28, 2017, the Tenant called a repair man to service the washing machine at the rental unit, without the Landlord's knowledge or consent. The repair man gave the Tenant a bill for \$65.00, which the Landlord does not feel obliged to pay. The Landlord submitted that repairs to a washing machine do not meet the definition of emergency repairs.

In her electronic submissions, the Landlord requested reimbursement for the Tenant for excessive utility bills in the total amount of \$112.82. She also requested "assurances from the tenant and the tenant's father that they will not short the February 1, 2018 rent by \$65.00 due to the tenant calling a washing repair man without my/landlord's prior approval".

The Tenant provided the following relevant testimony:

The Tenant testified that she became permanently disabled in August of 2015, because of an accident at work. She stated that up until August 29, 2017, she and the Landlord were close friends. The Tenant stated that the Landlord suggested that the Tenant is “using too much utilities” because she is home more often now that she is unable to work. The Tenant stated that the Landlord started sending the Tenant harassing letters with false claims and accusations. The Tenant denied all of the Landlord’s allegations and stated that she believes that the Landlord is attempting to end the tenancy in order to get a higher rent for the rental unit.

The Tenant testified that she was out of the province on December 8, 2017, and on January 6, 2018, and therefore could not have denied the Landlord access to the rental unit. She stated that, contrary to the Landlord’s testimony, the Landlord did not hand deliver written notice for access to the rental unit and therefore the Tenant was not given due notice. The Tenant stated that she was very uncomfortable with the Landlord having access to the rental unit without the Tenant being present.

The Tenant referred to emails and texts which she had provided in evidence, which she submitted show that she is being falsely accused by the Landlord. The Tenant submitted that she called the washing machine repair man “as a gesture of good faith”. She stated that she regularly removed the lint from the dryer and that the machine was old and needed to be replaced.

The Tenant testified that on December 24, 2017, she called the internet provider to determine why her internet was not working and she was advised by the internet provider’s agent “Maria” that there was no outage and that the Landlord had terminated the service and changed the password.

Analysis

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice. The Tenant suggested that the Landlord has an ulterior motive for wanting to end the tenancy. She submitted that the Landlord wants more rent for the rental unit. A landlord is entitled to increase rent once a year; however, the Landlord has increased the rent only twice in the four year tenancy. There is insufficient evidence that the Landlord is attempting to get more rent for the rental unit.

In this case, I find that the Tenant has significantly interfered with and unreasonably disturbed the Landlord when she refused to allow the Landlord’s reasonable request for access to the rental unit. The letter dated November 30, 2017, clearly indicates that the Landlord seeks access for a reasonable purpose on December 4, 2017. The Tenant’s letter in response, dated December 1, 2017, clearly denies the Landlord that access. In addition, the Tenant insists that she “must be present for each and every Landlord entry I may approve”. A tenant, or a tenant’s

agent, may be present when a landlord exercises her right of access, but there is no provision in the Act that a tenant may deny access if the tenant is not available when access is being exercised.

I also find that the Tenant unreasonably disturbed the Landlord by accusing the Landlord of cutting off the Tenant's internet and changing the password on December 24, 2017. I find that the Landlord provided ample evidence (copies of the internet provider's records) that the Landlord did not cut off the Tenant's access to the internet on December 24, 2017, and that the Tenant's allegation was not true.

It is important to note that a broken washing machine is not considered to be an emergency repair under Section 33 of the Act. If the washing machine causes flooding to rental unit then it might be considered an emergency, but this was not the case on December 28, 2017.

I find that the Notice to End Tenancy issued January 3, 2018, is a valid notice to end the tenancy. I find that the Notice is effective February 28, 2018. Further to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession.

I find that the Tenant provided insufficient evidence to support her claim for compensation for harassment. The tenancy is over and therefore the remainder of the Tenant's claim is dismissed.

The Landlord did not file an Application for Dispute Resolution and therefore her request for compensation in the amount of \$112.82 will not be considered in this Decision.

Conclusion

The Tenant's Application is dismissed in its entirety.

The Landlord is hereby provided with an Order of Possession **effective 1:00 p.m., February 28, 2018**. This Order may be enforced in the Supreme Court of British Columbia.

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: February 08, 2018

Residential Tenancy Branch

