



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LAT LRE OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). pursuant to section 47; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; order to suspend or set conditions on the landlord's right to enter the rental unit and an order allowing the tenants to change the locks to the rental unit pursuant to section 70; as well as authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants confirmed receipt of the landlord's 1 Month Notice and the landlord's evidence submitted in response to their Application for Dispute Resolution ("ADR"). The landlord confirmed receipt of the tenants' ADR and the evidentiary submissions of the tenants.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession?

If the tenancy continues, are the tenants entitled to any of the following orders:

- An order that the landlord comply with the Act by providing notice to enter the premises in accordance with the requirements of the Act?
- An order to suspend or set conditions to the landlord's right to enter the unit?
- An order to allow the tenants to change the locks to the unit?

Are the tenants entitled to recover their filing fee for this application?

Background and Evidence

This tenancy began in 2010. The rental amount is \$1500.00 payable on the 1st of each month. The landlord holds a \$750.00 security deposit paid by the tenants at the outset of this tenancy. The parties agreed that this tenancy continues as a month to month tenancy. The tenants applied to cancel a 1 Month Notice for Cause issued by the landlord as well as to require the landlord to enter the unit only in compliance with the Act and any other conditions I might find necessary to impose. The landlord sought an Order of Possession if the tenants were unsuccessful in their application.

On December 27, 2017, the landlord issued a notice to end tenancy to the tenants for the following reasons;

Tenant or a person permitted on the property by the tenant has:

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

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit or property.

Tenant has not done repairs of damage to the unit/suite.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants have seriously jeopardized the health or safety or lawful right of the landlord by threatening him and restricting his access to the rental unit and property. He testified that the tenant threatened to beat him up (illegal activity). He testified that he has complained to the tenant's employer about his threatening behaviour.

The landlord testified that the tenants have put the landlord's property at significant risk by damaging the exterior of the garage doors as a result of their children hitting hockey

pucks at the garage door. The landlord submitted photographic evidence of the damage to the door. The tenant did not confirm nor deny whether he and his children were responsible for damage to the garage door however he testified that he and his wife had already assured the landlord they would pay for repairs at the end of the tenancy.

The landlord also claimed that the tenants breached a material term of the tenancy agreement by not disclosing that they had a cat and not providing a pet damage deposit when asked to do so. The tenants testified that they have had a pet cat since the outset of the tenancy - that the landlord was aware of the cat and has only recently asked for a pet damage deposit. Tenant JM testified that the exterior screen door to their rental unit has a cat door in it that they installed. He testified that they have discussed that they will repair the cat door at the end of the tenancy as well.

The landlord also testified that the tenants refuse to allow him or his contractors into the rental unit to repair a damaged floor. He testified that this refusal to allow him to repair his floor and their refusal to repair the floor, after an ongoing dishwasher leak has caused extraordinary damage to his rental unit.

Tenant JM testified that there was a dishwasher leak in June 2017 that led to some damage to their floor in the rental unit. However Tenant JM testified that the floor was already damaged at the outset of the tenancy and with the wear and tear of their 7 year tenancy. Tenant JM testified that he told the landlord he was welcome to make the repairs when his children are not in school and he is able to get out of their home while the repair work is done, for example once summer vacation begins.

Tenant JM testified that the landlord replaced the dishwasher in June 2017 four days after the leak was reported. Tenant JM testified that, in September 2017, the landlord asked if the floors had been repaired but that he did not feel he was responsible to repair the floors or arrange for their repair. Tenant JM testified that he was flummoxed as to why the landlord was suddenly so anxious to repair the floors. He testified that the landlord advised him verbally that the repairs were urgent but the landlord had not contacted him in several months. Tenant JM testified that he told the landlord that he and his family could not reside in the rental unit without a functional kitchen. Tenant JM testified that he told the landlord he had vacation time at the end of November 2017 and that perhaps the floors could be repaired at that time.

Tenant JM testified that the landlord skulks around their property fairly often. Tenant JM testified that the landlord does not provide sufficient notice (in sufficient time) to enter the rental unit. He testified that sometimes, the landlord does not serve proper notice to

enter the rental unit in a proper manner. Therefore, the tenants sought an order that the landlord comply with the Act with respect to notice to enter. The tenants also sought order that the landlord's access to the rental unit be restricted and that the tenants be allowed to change the locks to the rental unit.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 1 Month Notice to End Tenancy on December 27, 2017, the landlord relied on the following grounds,

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

Tenant has caused extraordinary damage to the unit or property.

Tenant has not done repairs of damage to the unit/suite.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant or a person permitted on the property by the tenant has:

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

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offence under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal and should be prepared to establish the illegal activity by providing to the arbitrator and to the other party a copy of the relevant rule or legislation in accordance with the Rules of Procedure. The landlord relied on the ground for cause that the tenant has engaged in **illegal activity** by threatening the landlord. However, the tenant

disputed this allegation. The landlord was unable to provide any documentary support with respect to the tenant's alleged illegal activity at this time. I find that the landlord has provided insufficient evidence to prove that the tenant has engaged in illegal activity and therefore, I dismiss the landlord's application on this ground.

The landlord claims that the damage to his garage doors (dents, scratches, etc.) as well as a leak from the dishwasher leading to a need to replace the floors in the rental unit is **extraordinary damage to his property**. I accept the testimony of the tenant that the garage door damage was not extraordinary and that they will pay for any repair or replacement needed at the end of this tenancy. The landlord argues that the tenants' refusal to allow him to repair his floors in a reasonable period of time is damaging his property. I will address the landlord's submissions regarding the floors below. I find that the landlord is not entitled to an end to the tenancy based on this ground.

The landlord testified that the allegation on his 1 Month Notice of **breach of a material term of the tenancy agreement that was not corrected within a reasonable time**. The landlord testified that the tenants have a cat and he required a pet damage deposit. The tenants argued that the landlord had known of the cat since the outset of the tenancy and there is evidence of the cat (a cat door) even on the outside of the rental unit. I accept the testimony of the tenants and I dismiss the landlord's application to end the tenancy on this ground.

I dismiss the landlord's application to end this tenancy on the basis that the **tenant has not done repairs of damage to the unit**. I will order that the tenant repair the garage door prior to the end of this tenancy and I will address the issue of required repairs to the unit below.

The final ground that the landlord relied on to end this tenancy is that the tenants have **significantly interfered with or unreasonably disturbed the landlord; seriously jeopardized the health or safety or lawful right of the landlord; and/or put the landlord's property at significant risk**. While I have insufficient evidence to assess whether the tenant has threatened the landlord or otherwise interfered with the landlord's rights, I find that the landlord has submitted sufficient evidence to show that the tenants have put the landlord's property at significant risk.

I accept the landlord's argument that the tenants' refusal to allow him to repair his floors in a *reasonable period of time* will result in significant damage to his property, if that has not already occurred. The landlord is unable to assess the damage to the unit because the tenants have not provided him sufficient access to the unit to make repairs. I accept

the landlord's description of the ways in which the tenants have delayed the repairs or replacement of the floors in this unit.

The leak from the dishwasher occurred in June 2017. The parties agree that, within 4 days of the leak, the landlord provided a new dishwasher. Based on the email correspondence and notices to enter the unit submitted for this hearing, I find that the landlord has made attempts to get permission of the tenants to complete the repair or replacement of the floors. I find that the tenants have failed to make any sufficient accommodation to allow the landlord to make the repairs.

The tenants testified that they are baffled as to why the landlord is so eager to get his floors replaced. The tenants also acknowledged that they have been contacted by contractors regarding the floor replacement. However, a copy of a letter dated October 6, 2017 from the landlord to the tenant advised the tenants that, on November 3, 2017, a contractor would be attending to begin the repairs. The letter included a detailed breakdown of further work to be done to the unit. The landlord reminded the tenants that this is an emergency repair to the unit that must be completed.

In support of the landlord's position, a letter dated October 11, 2017 from the landlord's insurer wrote that they had been unable to complete work in the unit, particularly the floor replacement and the insurer states, "the tenants have not scheduled access...for emergency and restoration work." The letter also warns the landlord that lack of repair to any damages caused by water can often lead to mold or mildew and that those damages would likely be at the landlord's own cost.

I find that the tenants have delayed the floor repairs required by the landlord's insurance company for an excess of 6 months – an unreasonable amount of time given the nature of the repairs required. I accept the evidence from the landlord's insurer highlighting the importance of timeliness in these types of repairs. As the tenants have not met their general obligations as well as their obligations pursuant to section 29, 32 and 33 of the Act (provided below), I find that the tenants have put the landlord's property at significant risk. Therefore, in all of the circumstances, I find the landlord's 1 Month Notice to End Tenancy is justified on this ground and the landlord is entitled to an Order of Possession.

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless ...

...(f) an emergency exists and the entry is necessary to protect life or property.

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(vi) in prescribed circumstances, a rental unit or residential property.

... (4) A landlord may take over completion of an emergency repair at any time.

When a significant repair is required to a large portion of the floor in the residence and mold or mildew are legitimate consequences to failing to repair the floor in a reasonable period of time, the landlord must take action. I find these repairs can be considered emergency or urgent repairs, based on all of the evidence provided. The landlord must have access to a rental unit in circumstances where his property is in jeopardy and because he is obliged to maintain the health, safety and housing standards.

Based on the evidence before me, and as the landlord's Notice to End Tenancy is accurate in both form and content, I find that the landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act,

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 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This tenancy shall end. Given that the tenancy will come to an end, I find that the tenants' applications (re-stated below) are moot and therefore dismissed.

- An application for an order that the landlord comply with the Act by providing notice to enter the premises in accordance with the requirements of the Act;
- An application for an order to suspend or set conditions to the landlord's right to enter the unit and
- An application for an order to allow the tenants to change the locks to the unit.

I find that the tenants are not entitled to recover their filing fee for this application.

Conclusion

I dismiss the tenants' application in its entirety.

The landlord is provided with a formal copy of an Order of Possession effective March 31, 2018. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of 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 28, 2018

Residential Tenancy Branch