



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, FFT, LAT, LRE, MNDCT, OLC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested the following relief:

- an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on March 19, 2018 (the "Notice");
- an Order for emergency repairs;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement;
- an Order restricting the Landlord's right to enter the rental unit;
- authorization to change the locks on the rental unit;
- monetary compensation in the amount of \$80.00; and,
- recovery of the filing fee.

The hearing was conducted by teleconference on May 2, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

Preliminary Matter—Tenant's Request for an Adjournment

At the outset of the hearing the Tenant alleged she did not receive the Landlord's evidence and requested an adjournment.

The Landlord's agent testified that the Landlord's evidence was served on the Tenant by registered mail sent on April 17, 2018. A copy of the tracking number for the registered mail package is included on the unpublished cover page of this my Decision.

The Tenant testified that she is not "really living in the rental property" because she claimed it is not safe. She also claimed she has not had access to the rental unit, her mailbox, or her car.

The Tenant then stated that she saw some evidence “initially”, but the evidence was taken by people in the rental building.

A review of the materials served on the Tenant (of which she claims she did not receive) confirms that the Landlord’s evidence includes photos of the rental unit, documents and notices which have been posted to the Tenant’s door, as well as photos confirming posting of the notices.

Rules 7.9 of the *Residential Tenancy Branch Rules of Procedure* lists the following criteria when considering a party’s request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the documents contained in the Landlord’s evidence either would have been previously provided to the Tenant (as they were posted to the rental unit door) or within her knowledge (such as the photos of the condition of her rental unit) such that even in the event they had not been received, there would be no prejudice to the Tenant in considering them.

I also note, for reasons which I will further expand upon this my Decision, that I do not accept the Tenant’s evidence that she did not receive the Landlord’s evidence package.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I therefore find that the Tenant was served with the Landlord’s evidence in accordance with the *Act*, and I dismiss her request for an adjournment.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the parties’ submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Relief Sought on Application

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearing dates before the Residential Tenancy Branch are scheduled on a priority basis. A Tenant's Application to cancel a notice to end tenancy and a Landlord's application for an order of possession take precedence over monetary claims. Although this particular hearing lasted 90 minutes, hearings are also only scheduled for one hour and as such it is not always possible to address all matters raised in a particular Application. In the case before me, the parties were given a priority hearing date in order to address the question of the validity of the 1 Month Notice.

The Tenant's monetary claim is not urgent and is therefore is dismissed with leave to reapply. The balance of the Tenant's claims relate to matters which are only relevant if this tenancy continues; for reasons which I will expand upon in this my Decision, the Tenant's other claims are dismissed.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a notice to end tenancy, the landlord must present their case first as the landlord bears the burden of proving their claim on a balance of probabilities. As such, even though the Tenant brought forward this Application, the Landlord presented their evidence first.

The Landlord's agent, K.H. testified that the tenancy began April 2016. Monthly rent was initially \$1,302.00 and is currently \$1,404.00.

K.H. testified that following a suite inspection on March 19, 2018 the Landlord issued the Notice. The reasons cited on the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

K.H. stated that the reasons for ending the tenancy are due to the Tenant's failure to communicate with the Landlord, the condition of the rental unit, and the fact that the Tenant changed the locks without the Landlord's knowledge or consent.

K.H. further testified that the Landlord has not been able to effectively deal with the rental unit or the Tenant as she refuses to communicate. K.H. stated that the Tenant's claim that she did not receive the Landlord's evidence package is reflective of a pattern of avoidance behaviour which in turn has put the Landlord's property at risk. Digital evidence provided by the Landlord confirms that the Landlord has posted numerous notices to the rental unit door in an attempt to communicate with her.

As an example, K.H. described how the Landlord was not able to deliver new appliances to the rental unit as the Tenant refused to cooperate. Documentary evidence submitted by the Landlord confirmed that the Landlord attempted to deliver appliances to the Tenant as early as July of 2017. After numerous attempts to communicate with the Tenant, including making arrangements with delivery persons, the Landlord stored the appliances at the rental building. K.H. also noted that despite the Landlord's considerable efforts to deliver the appliances, the Tenant alleged at a previous arbitration that the Landlord had given her appliances away.

K.H. stated that on March 19, 2018 the Tenant asked for the appliances to be delivered, however, the suite inspection on March 19, 2018 confirmed that the condition of the rental, and in particular the accumulation of items, was such that the appliances could not be delivered.

As well, K.H. noted that the Tenant claimed in her Application that the skylight was not secure, however, evidence provided by the Landlord confirms that this work was completed in October of 2017. Again, the Tenant was given written notice of this work, yet her Application suggests she was not even aware it was done.

Additionally, K.H. noted that in her Application the Tenant alleges her rental unit is insecure, yet the Landlord addressed her concerns about the lock also in October 2017.

K.H. stated that it appears as though the Tenant is not living in the rental unit. She stated that recently the police attended the rental unit on three occasions looking for the Tenant's adult son; including, March 5, 2018 at 9:00 p.m.; March 6, 2018 at 4:00 a.m.; and March 6, 2018 at noon when they came with a warrant. She reported that when the police arrived they informed the Landlord that the rental unit was in extremely poor condition and there was a cat in distress.

The Landlord then gave notice to enter the rental unit on March 9, 2018 for an inspection on March 13, 2018.

On March 12, 2018 the Landlord found a handwritten letter from the Tenant to the Landlord dated March 14, 2018, wherein the Tenant wrote that the notice was too vague and didn't specify a time.

The Landlord then gave a second suite entry notice on March 12, 2018 to inspect the suite for damages on March 19, 2018.

The Landlord confirmed that they attempted to enter the rental unit on March 19, 2018 at which time they realized the locks had been changed.

The Landlord stated that on March 19, 2018 the Tenant called the police and tried to have the Landlord charged with break and entry claiming that she did not have notice of the entry.

K.H. stated that a locksmith removed the unauthorized lock on March 19, 2018 and they entered the rental unit at 10:00 a.m.

K.H. stated that the assistant manager performed the inspection with a witness. She confirmed that she was also present and stated her observations as follows:

- the rental unit was extremely cluttered and suggested the Tenant was hoarding items;
- there was cat vomit and feces throughout the rental unit;
- the stench was unbelievable and the rental unit appeared very unsanitary;
- there were two cats in the rental that appeared neglected, one of which was very extremely emaciated and couldn't move or lift its head; and,
- it appeared as though no one was living there.

Photos submitted by the Landlord confirmed the above description.

K.H. stated that the assistant manager called the SPCA, who attended the rental unit with a Constable J.H. who in turn took the sick cat and the other cat to the SPCA.

K.H. stated that the 1 Month Notice was issued to the Tenant in person at 5:02 p.m. on March 19, 2018; K.H. stated that the Tenant could not get into her rental unit because the lock had been changed and they handed her a new key and the Notice.

The Assistant Manager, C.H. also testified. He confirmed that he took the photos which were submitted on March 19, 2018. He stated that while they show the condition of the rental unit, they do not depict the smell and the emotional feeling of finding an animal in such distress. He described the smell as being a combination of fecal matter and vomit.

C.H. stated that when he picked up the cat it couldn't move. During his testimony he began to cry as he described the feeling of picking up the cat. He stated that the SPCA took both of the cats and that to his knowledge the sick cat had to be euthanized.

C.H. further stated that it appeared as though the rental unit had been abandoned. He stated that the kitchen was covered in dishes and it didn't appear as though anyone had prepared a meal in a very long time.

C.H. also confirmed that when documents and notices were posted to the rental unit door he was the one who took photos confirming their delivery. C.H. also stated that the documents and notices were removed after the Tenant came home, and were not removed by others as she alleged. C.H. also stated that there were times when the notices were on the door for numerous days indicating the Tenant was not at the rental unit or caring for her pets.

In response to the Landlord's submissions the Tenant testified as follows.

She stated that she has not caused any damage and has not jeopardized anyone's lawful rights. She agreed that there was cat vomit but claimed she did not see the feces. She stated that there is mess or clutter, but she believes that the condition of the rental unit is in no way jeopardizing the safety of the building.

The Tenant claimed that the cat "became ill overnight when [she] was not there". She further claimed stated that people break into her place and rummage through her things and throw them on the floor. She also stated that personal papers and legal papers are missing and that she believes others are taking them.

The Tenant stated that she agreed that the rental unit was not in very good condition "at that moment" when they inspected. She stated that was very shortly afterwards "everything changed" and she was never given the opportunity to show that the suite was fine. The Tenant further stated that she agreed to a secondary inspection. When I presented the option of having the Landlord perform such an inspection the afternoon of the hearing, the Tenant responded that she had just emptied a storage locker and that there were more items in the unit than at the time of the inspection.

The Tenant then stated that she has not been living in transition houses since January 2018. She confirmed that she has only stayed overnight at the rental unit when she was in between transition houses and could not estimate how many times she has been at the rental unit.

The Tenant stated that she has a disability and the Landlord should accommodate her disability rather than give her an eviction notice. The Tenant stated that due to her anxiety disorder she was not able to deal with the hearing. At that time, her support worker, G.B., testified on her behalf

G.B. confirmed that he is an outreach worker/advocate and a social worker. He confirmed that he has not been in the rental unit. G.B. stated that he met with the Tenant approximately a week and a half ago. He confirmed that he was at the hearing to support the Tenant.

G.B. stated that the Tenant provided him with some documents including the notes about the appliances, the notices from the SPCA, as well as the 1 Month Notice.

G.B. also stated that he was aware that the Tenant wasn't really residing at the rental unit. G.B. confirmed that the accumulation of items is often trauma based. He stated that he only came into contact with the Tenant recently but it is his hope that he can help her with her hoarding disorder.

Analysis

After consideration of the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant's Application to cancel the Notice should be dismissed.

I find that the Tenant has refused to communicate with the Landlord and that in doing so, has seriously jeopardized the lawful right of the Landlord to effectively deal with the rental unit or this tenancy. A landlord must be able to communicate with a tenant regarding the rental unit, the rental building, and matters relating to the tenancy. This is essential in emergency situations, but also when dealing with more day to day matters. The Tenant's refusal to communicate with the Landlord has impaired the Landlord's ability to manage the property, which has resulted in the Landlord not even being able to deliver new appliances to the Tenant: something which is entirely beneficial to the Tenant.

A landlord must be able to access the rental unit in the event of an emergency.

I accept the Landlord's evidence that the Tenant changed the locks on the rental unit thereby denying the Landlord access to the unit. This is in violation of section 31 of the *Residential Tenancy Act* which provides in part as follows:

31 ...(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

I also find that the Tenant has for all intents and purposes abandoned the rental unit and her pets and in doing so has put the property at risk. The Tenant stated that she wasn't really living at the rental unit as she has been moving between transition homes. The Tenant was not even able to provide an estimate as to how many days she had been in the rental unit since January 2018. Although she claimed that her cat became "ill overnight", the photos of her cat and the rental unit, as well as the testimony of the Landlord's representatives who conducted the inspection, indicate the situation was likely one of more significant and prolonged neglect.

The photos of the rental unit show a significant accumulation of items. Understandably the Landlord is not able to deliver the appliances to the Tenant as there is no clear pathway. Such accumulation of items may create a fire hazard, as well as negatively impacting emergency

personnel's access to the rental unit and occupants. While the Tenant claimed to have cleaned the rental unit up after the inspection, she also stated that she emptied a storage locker into the space such that there were more items at the time of the hearing than at the time of the inspection. This, combined with the Tenant's refusal to communicate with the Landlord regarding issues relating to the rental unit, has put the Landlord's property at significant risk.

I find that the Landlord has met the burden of proving the Notice and I therefore dismiss the Tenant's request for an Order canceling the Notice.

That the tenancy should end in accordance with the Notice.

Conclusion

The Tenant's monetary claim is dismissed with leave to reapply.

The Tenant's claim for an Order canceling the Notice is dismissed.

Pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. Should the Tenant not move as required, the Landlord may file and enforce the Order in the B.C. Supreme Court.

As the tenancy is ending, the balance of the Tenant's claims as set out in her Application for Dispute Resolution are 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: May 11, 2018

Residential Tenancy Branch