



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlords' right to enter the rental unit; an order permitting the tenant to change the locks to the rental unit; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The hearing was adjourned from the originally scheduled date at the request of the tenant, and my Interim Decision was provided to the parties.

Both landlords and the tenant attended the hearing on both scheduled dates. The parties each gave affirmed testimony and were given the opportunity to question each other.

Although my Interim Decision contained an order requiring both parties to provide and exchange evidence by no later than April 27, 2018, the landlords did not oppose the late evidence provided by the tenant. No further issues were raised with respect to service or delivery of documents or evidence, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reason for issuing it?
- Has the tenant established that an order should be made limiting or setting conditions on the landlords' right to enter the rental unit?
- Has the tenant established that an order should be made allowing the tenant to change the locks to the rental unit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The first landlord (JJ) testified that this fixed term tenancy began on March 1, 2017 and expired on August 31, 2017 thereafter reverting to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$675.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$337.50 which is still held in trust by the landlords, and no pet damage deposit was collected.

The rental unit is a basement suite in a side-by-side duplex. Both sides of the duplex have a basement suite, and all 4 units are currently tenanted. The landlords do not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a One Month Notice to End Tenancy for Cause was placed on the tenant's door on January 31, 2018, and a copy has been provided as evidence for this hearing. It is dated January 31, 2018 and contains an effective date of vacancy of March 5, 2018. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

On December 26, 2017 the landlords received a call from the neighbouring tenants above the rental unit indicating that their suite was very cold and the furnace was not working and the fan was completely off. Each side of the duplex has its own furnace, which service the upper and lower units and the thermostats are located in the upper units. The landlords tried to contact the tenant by phone and text but the tenant didn't respond. The landlords decided that they had to attend for an emergency repair. The landlord's husband attended to investigate, looked at the furnace and it seemed to have no power. The breaker box is in the tenant's bedroom, so he knocked on the bedroom door. The tenant was in the bedroom and called police. A police report has been provided as evidence for this hearing. The tenant told the police she had turned off the power to the furnace because she was concerned of the cost of the gas bill. The tenancy agreement specifies that the tenants in the upper unit pay 60% of the utilities, and the tenants in the lower level unit pays 40%. The landlords have provided a copy of a string of text messages wherein the tenant had complained about the cost of the gas bill, and the tenant said she was not happy and would turn off the power because she had no control over the heat setting. The tenant tampered with the breaker box, turned off power to the furnace, and the temperature on December 26 was below 0 degrees. The tenant would not respond to texts or calls, and the landlords were concerned that lack of heat could cause damage to property. It was a pre-meditated act saying that she would do it and then did so without concern for other tenants or the landlords' property.

The second landlord (RJ) confirmed the testimony of his wife, and testified that the tenant had texted him saying she was going to turn off the furnace when she wasn't home or whenever she found it too warm, and did so on December 26. The landlord replied saying that he was going to go and check the furnace and received no response. The landlord went to the rental unit and knocked on the door, and no one responded. The landlord entered and knocked on the bedroom door, which is where the breaker box is located. The tenant yelled that she was naked and was calling police. The landlord remained frozen believing it was better to remain in place until police arrived to ensure they knew that the landlord hadn't done anything wrong. The tenant was upset and crying. The police asked the landlord to exit and took the tenant's statement.

The landlord further testified that he didn't get to the breaker box, and the tenant said she had turned off the power, but the landlord is not certain if the tenant did so at the breaker box or a switch located near the furnace. It was a one-time occurrence, but was premeditated, deliberate and without consideration to other tenants.

Prior to December 26, 2017 the tenant contacted the landlords about heat, and the landlords instructed the neighbouring tenants in the upper unit to keep the thermostat at 70 degrees. There is no lock on the thermostat.

The tenant testified that it was a one-time occurrence, not an on-going obstruction to other tenants or the landlord. The tenant loves the home and takes good care of it. She is courteous and kind to other tenants. The tenant contacted the landlord about the tenancy, and agrees that she shouldn't have turned off the furnace, but was uncomfortable and had no control of the heat. It wasn't off for a long period of time.

The tenant finds it unfair to pay for utilities that she has no control over, and suggests that the landlords put lights in the laundry room and outside on a motion sensor, and create a new agreement with other tenants that's more fair. It would also be helpful if the landlords would install a locked casing over the thermostat to prevent turning it up. The landlord told the tenant at the beginning of the tenancy that the splitting of the utilities was based on the square footage of each unit.

The landlord has also texted the tenant about a blown fuse indicating that if the tenant didn't respond the landlord would enter and re-set the breaker.

The tenant further testified that other tenants have installed 4 cameras and police told them where they could be set in order to not be intrusive. However, they are not in those areas and aim over the tenant's door. The cameras are live feed linked to cell phones and the internet, and are able to record audio and video during the day and night. Three are in the carport, one of which is about 2 feet from the tenant's front door pointed with a 180 degree angle and audio. They point at the whole front of the house, the sidewalk entrance to the tenant's unit and down the stairs over the tenant's back door. Any time anyone visits or the tenant enters or leaves, it's a live feed and linked to phones.

The tenant seeks an order to protect the tenant's right to privacy and quiet enjoyment that the landlords comply with the law. A recent case in the Supreme Court of British Columbia awarded a tenant \$3,500.00 for breach of privacy because a camera could see faces of those coming and going. There are also Housing Guidelines and of the Office of the Privacy Commissioner regarding video cameras. The cameras don't cover the carport, but are pointed out and record areas around, not the neighbouring tenants' door, everyone else's doors. If they are concerned about break-ins, they're in the wrong place. There has to be a reason.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The parties agree that the tenant turned off the heat which affects other tenants in the building, and that such behaviour was a one-time occurrence. I do not find that such behaviour is enough to establish that the tenant has jeopardized the health or safety or lawful right of another occupant that is serious enough to warrant ending the tenancy. The incident took place on December 26, 2017 and the landlords issued the Notice on January 31, 2018. No issues about that have taken place prior or since, and I am not satisfied that the landlords have established that the landlords had sufficient cause to end the tenancy.

The tenant suggests that the landlords add lights, change the tenancy agreements of other tenants or to, put a lock on the thermostat. I decline to make any such orders. The parties have a tenancy agreement, and I cannot change that or require a tenant who is not a party to this dispute change a tenancy agreement.

With respect to the tenant's application for an order permitting the tenant to change the locks to the rental unit, that is a very serious concern for a landlord, and specifically where other tenants share the same building.

The *Residential Tenancy Act* is very clear with respect to a landlord's right to enter a rental unit, and I order the landlords to comply with Section 29:

Landlord's right to enter rental unit restricted

29 (1) 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.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I further order the tenant to refrain from tampering with the heat.

With respect to the cameras, I agree that pointing them at the tenant's portion of the rental home is intrusive, and a breach of a tenant's right to quiet enjoyment, freedom from unreasonable interference. I order the landlords to require other tenants to change the direction of the cameras so as not to interfere or intrude upon the tenant or the tenant's guests.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in that amount. I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated January 31, 2018 is hereby cancelled and the tenancy continues.

The tenant's application for an order permitting the tenant to change the lock to the rental unit is hereby dismissed.

I hereby order the landlords to comply with Section 29 of the *Residential Tenancy Act* as set out above.

I further order the tenant to refrain from tampering with the heat.

I further order the landlords to require other tenants to change the direction of the cameras so as not to interfere or intrude upon the tenant or the tenant's guests.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 10, 2018

Residential Tenancy Branch