Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPL LRE

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlords applied for:

- an Order of Possession pursuant to section 49 of the *Act* for the Landlords' Use of Property; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- an Order suspending or setting conditions on the landlords' right to enter the rental unit pursuant to section 70 of the *Act*;
- an Order for the landlords to change the locks to the rental unit pursuant to section 70 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord and the tenant attended the hearing, with the landlords being represented at the hearing by landlord N.T. (the "landlord"). All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Following opening remarks, the tenant clarified that she was not disputing the landlords' 2 Month Notice to End Tenancy, and had accepted the Notice.

Preliminary Matters – Tenant's Application for a Monetary Award

On July 5, 2018 the tenant applied to amend her application to include an application for a monetary award of $8,107.73. The tenant said she sent this amendment to the landlords by way

of Canada Post Registered Mail on July 7, 2018. Pursuant to sections 88, 89 and 90 of the *Act* the landlords are deemed served with these documents and this amendment on July 12, 2018, five days after their posting by Registered Mail.

The landlord said he had not received the tenant's amended application and did not have any information related to her application for a monetary award before him at the hearing.

Residential Tenancy Branch Rule of Procedure 4.6 states, "A copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondents not less than 14 days before the hearing."

I find that the tenant failed to serve her amended application for a monetary award in the allowable time limit permitted under *Rule of Procedure 4.6*, as her amendment was received six days prior to the hearing. The tenant's application for a monetary award is therefore dismissed with leave to reapply.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Should the landlords be directed to change the locks to the rental unit?

Should the landlords' right to enter the rental unit be suspended?

Can either party recover the filing fee?

Background and Evidence

The tenant explained that this tenancy began on April 27, 2018. Rent was $1,000.00 per month and a security deposit of $500.00 paid at the outset of the tenancy continues to be held by the landlords.

The tenant confirmed receipt of the landlords' 2 Month Notice to End Tenancy for Landlords' Use of Property on June 5, 2018. The tenant said that she was not disputing the notice and was looking to move out of the property on the effective date of the notice, in this case, August 31, 2018.

The tenant said she was seeking orders suspending the landlords' right to enter the rental unit and directing the landlords to change the locks to the rental unit. Specifically, the tenant said that she wanted a lock put on the "in-law" door which allowed the landlords' access to her rental unit.

During the hearing the tenant detailed several alleged instances of the landlords entering her rental unit. The tenant said that the landlord had entered the unit on numerous occasions in April 2018 and documented two occasions on May 16, 2018 when landlord S.T. came into her unit without proper notice. The tenant recalled several anomalies which were discovered in her rental unit after alleged entrances to the property by the landlords. These included windows and blinds being shut, heat being turned off and comments being directed to her by landlord S.T. regarding the state and decoration of her rental unit. The tenant said that the only occasion when the landlords provided any notice of her intention to enter the rental unit was on June 24, 2018 when the landlords sought to install a latch on her door.

Landlord N.T. disputed the tenant's version of events and stated landlord S.T. had only entered the rental unit on very limited occasions and strictly out of necessity. Both parties explained that the property had undergone an extensive renovation converting the property from a septic system to a sewer system. The landlord said that this costly conversion required that the water meter be regularly monitored and that the sump pump also be checked so as to ensure that flooding issues did not occur. The landlord said that the utility room containing the water meter was accessed through the rental unit and that concerns had arisen shortly after the construction works were completed which required the water meter to be closely monitored. The landlord noted that on one other occasion landlord S.T. had entered the rental unit to turn off the heat and to close the windows so that the air-conditioning system could properly function.

The landlord disputed the tenant's recollection of the events that allegedly transpired on May 16, 2018. The landlord said landlord S.T. had heard a large crash and feared for the tenant's safety. The landlord explained that S.T. had gone down to the rental unit to ensure that the tenant was safe and had not fallen.

On June 24, 2018 the parties met to install a hook and latch on the "in-law" door. The landlord explained that this prevented anyone from accessing the rental unit.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlords' use of property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 15 days of service granted under section 49(9) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(9)(a) of the *Act* to have accepted that the tenancy ended on the effective date of the 2 Month Notice, August 31, 2018.

I am therefore issuing an Order of Possession to the landlords effective at 1:00 P.M. on August 31, 2018.

The tenant has applied for Orders suspending the landlords' right to enter the rental unit and for an Order directing the landlords to change the lock to the rental unit.

Section 25 of the *Act* states, "At the request of a tenant at the start of a new tenancy, the landlord must rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and pay all costs associated with the changes." While Section 29 of the *Act* notes, "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 time of entry, which must be between 8am and 9pm unless the tenant otherwise agrees;

c) the landlord provides housekeeping or related services
d) the landlord has an order of the director authorizing the entry;
e) the tenant has abandoned the rental unit; or
f) an emergency exists and the entry is necessary to protect life or property

After considering the oral testimony and having reviewed the evidentiary packages of both parties, I find that sufficient evidence was presented by the tenant that the landlords entered the rental unit on at least one occasion without providing proper notice and for reasons that could not be described as an emergency that threated life or property. The landlord acknowledged during the hearing that the suite was entered so that the heat could be turned down and windows closed in order to ensure that the air conditioning system could function. I find this to be an unnecessary intrusion of the tenant's privacy and direct the landlords to provide proper notice as described above, should they wish to enter the tenant's suite at a future date.

The second portion of the tenant's application relates to an Order directing the landlords to change the locks to the rental unit. While some evidence was presented that there had previously been no barrier to entry in the rental unit, both parties acknowledged that a latch was installed on June 24, 2018 which prevented access to the rental unit. As this tenancy is ending on August 31, 2018 and the landlords have been ordered to comply with the *Act* setting conditions on the landlords' right to enter the rental unit, I find it would be impractical to direct the landlords to install a second lock on the rental unit. If the landlords fails to observe this order and continues to enter the rental unit without providing the tenant proper notice as is required by section 29(b) of the *Act*, the tenant may pursue a monetary award related to this violation. I therefore decline to order allowing the tenant to change the locks to the rental unit.

Conclusion

I am granting the landlords an Order of Possession to be effective at 1:00 P.M on August 31, 2018. The landlords are provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The landlords are ordered to provide the tenant with proper notice pursuant to section 29(b) of the *Act* should they intend to enter the rental unit.

The tenant's application for an order to change the locks to the rental unit is dismissed without leave to reapply.

The tenant's application for a monetary award is dismissed with leave to reapply.

As both parties were successful in their application, they must each bear the cost of their own filing fees.

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: July 16, 2018

Residential Tenancy Branch