Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, DRI, OLC, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause; to dispute a rent increase; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on September 09, 2018 the hearing documents and 12 pages of evidence were sent to the Landlord, via registered mail. Legal counsel for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On September 29, 2018 the Tenant submitted 20 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on September 29, 2018. Legal Counsel for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 01, 2018 the Landlord submitted 45 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was personally served to the Tenant on September 30, 2018. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

At the conclusion of the hearing both parties were asked if they had additional evidence to submit and they both advised that they did not.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter #1

At the hearing the Tenant stated that the Landlord has attempted to impose a rent increase but one has not been imposed.

The Landlord stated that he has not imposed a rent increase and that he has no current plan to impose a rent increase.

As there has been no rent increase and a rent increase is not pending, the Tenants withdrew their application to dispute a rent increase.

Preliminary Matter #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application.

The most urgent issue in dispute at these proceedings is possession of the rental unit and I will, therefore, consider the Tenants' application to set aside a One Month Notice to End Tenancy for Cause.

The Tenants have also applied for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement, which relates to alleged deficiencies with the rental unit. As that matter is not sufficiently related to the application to set aside a One Month Notice to End Tenancy for Cause, it is dismissed, with leave to reapply.

The Tenants retain the right to file another Application for Dispute Resolution for an Order requiring the Landlord to correct deficiencies with the rental unit.

Preliminary Matter #3

When a landlord wishes to end a tenancy in accordance with section 47 of the *Act*, a landlord is obligated to inform the tenant of the reasons for ending the tenancy. This is to ensure that the tenant has a full understanding of the reasons for the tenancy ending

and, if necessary, it provides them with a reasonable opportunity to dispute the allegations being made by the landlord.

The One Month Notice to End Tenancy for Cause that is the subject of these proceedings has a section which lists the various reasons for ending the tenancy. The reasons cited for ending this tenancy on this Notice to End Tenancy are:

- the tenant or a person permitted on the property by the tenant has put the Landlord's property at significant risk; (Section 47(1)(d)(iii) of the *Act)*
- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; (Section 47(1)(f) of the *Act)*
- and the tenant has not done required repairs of damage to the unit/site. (Section 47(1)(g) of the *Act).*

The One Month Notice to End Tenancy for Cause that is the subject of these proceedings also has a "Details of Cause" section, where landlords are directed to provide "dates, times, people or other information that says who, what, where, and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary".

In the "Details of Cause" section the Landlord indicated the tenancy was ending for the following reasons:

> "Did not maintain yard and gardens, installed door in room after they were not to change anything. Failed to remove snow causing damage to staircase. Lawn mower is missing."

Although the Landlord has outlined other concerns regarding the tenancy in his documentary evidence, such as the cleanliness of the rental unit, those issues were not considered at these proceedings. Those issues were not considered because the One Month Notice to End Tenancy for Cause does not identify those concerns and I find that it would, therefore, be unfair to the Tenant to consider them at these proceedings.

The only reasons for ending the tenancy that will be considered at these proceedings will be the reasons listed in the "Details of Cause" section of the One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act* be set aside?

Background and Evidence

The Landlord and the Tenants agree that the tenancy with these Tenants began on September 31, 2017, and that rent of $1,750.00 is due by the first day of each month.

The Landlord and Tenant #2 agree that Tenant #2 moved into the rental unit in 2015.

The Landlord and Tenant #3 agree that Tenant #3 moved into the rental unit in 2016.

The Landlord and the Tenants agree on that August 30, 2018 the Landlord personally served a person living in the rental unit with a One Month Notice to End Tenancy for Cause. The Tenant stated that he received this Notice to End Tenancy on August 30, 2018.

The Landlord and the Tenants agree that this Notice to End Tenancy declared that the rental unit must be vacated by August 30, 2018.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenants have not complied with their verbal agreement to maintain the yard and garden. He stated that when he discussed maintenance of the yard with the Tenants he specifically advised them they needed to maintain and weed the gardens,

The Tenant stated that when they discussed the need to maintain the yard the Tenants understood they had to complete general maintenance, such as mowing the lawn and raking leaves. He stated that the Landlord did not inform them that they were required to weed the gardens.

The Landlord stated that the gardens were not weeded, which resulted in the garden becoming overgrown and killing some of the plants. He stated that the grass has bare spots and is full of weeds because it was not watered or well-maintained. He stated that the Tenants cut down a bush without his consent in order to build a garden.

The Tenant stated that this was a particularly dry summer and that watering restrictions had an impact on the condition of the lawn.

Tenant #2 stated that he did not cut down a bush to build his garden and that the garden is actually in front of the bush that was cut down. He stated that the bush he cut

down was damaged by snow in 2016 and that he cut it with permission from the Landlord. The Landlord stated that he was not advised that the bush was damaged by snow and he did not agree that it should be cut.

The Landlord submitted photographs #1, 2, 4, and 5, which were photographs of the yard that were taken in 2013. He stated that these photographs are representative of the yard when Tenant #2 moved into the rental unit. None of the Tenants agree that these photographs represent the condition of the yard when they moved into the rental unit.

The Landlord submitted photographs #6, 7, 8, and 9 which were photographs of the yard that were taken in July of 2018. The Landlord and the Tenants agree that these photographs fairly represent the condition of the yard on that date.

The Tenants submitted 4 photographs of the yard that were taken on August 31, 2018. The Landlord and the Tenants agree that these photographs fairly represent the condition of the yard on that date.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenants installed a door leading into a family room. He stated that Tenant #2 asked if he could install a door at this location when he moved into the rental unit and he was told that he could not.

Tenant #2 stated that when he moved into the renal unit he asked the Landlord if he could install a door at this location and he was told that he could install the door, providing he did not damage the rental unit.

Tenant #2 stated that he did not damage the rental unit when he installed the door as he simply attached hinges to the place in the door jamb where hinges had previously been attached. The Landlord agreed that the hinges were placed on the door jamb where hinges have previously been attached but he contends that this has damaged the jamb by cracking it and by scraping the paint that had been applied over the area where hinges were previously attached.

Photographs of the door that was installed were submitted in evidence.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenants did not adequately remove snow in 2016, which caused the landing leading to the veranda to sink.

The Landlord submitted a photograph of a landing leading to a covered veranda which he contends shows the landing has sunk. He also submitted a photograph of a carpenter's level that he contends shows the landing has sunk by approximately ¾ of an inch.

The Tenants contend that the landing has not sunk.

The Tenants submitted a photograph of the exterior of the rental unit that was taken in February of 2018, which depicts an extensive amount of snow around the rental unit, with a narrow path through the snow leading to the rental unit.

The Tenant stated that they maintained that path and a path across the landing leading to the veranda, as that was the main access to the rental unit.

The Landlord stated that he is attempting to end this tenancy, in part, because the Tenants discarded a lawn mower that he had left at the residential complex to be used by the Tenants. He stated that on June 21, 2018 he was told that the lawn mower was broken; that he did not authorize the Tenants to purchase a lawn mower; that the Tenants purchased a used lawn mower that is of a lesser quality than his mower; and that when he went to the rental unit in late July or early August he was advised that his lawn mower had been discarded.

The Tenant stated that the lawn mower provided by the Landlord stopped working on July 05, 2018; that the Landlord told the Tenants that he would not fix or replace the lawn mower; that the Tenants purchased a used lawn mower; that the Landlord's lawn mower was discarded in late July of 2018; and that in late July of 2018 the Landlord was informed the lawn mower had been discarded.

Analysis

Section 47(1)(d)(iii) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Section 47(1)(f) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

Section 47(1)(g) of the *Act* authorizes a landlord to end a tenancy ifthe tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) of the *Act*, within a reasonable time.

When a tenant disputes a Notice to End Tenancy the landlord bears the burden of proving that there are grounds to end the tenancy. IIn the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of evidence to support their version of events or to place the credibility of the other party in doubt, the party bearing the burden of proof would typically fail to meet that burden.

Residential Tenancy Branch Policy Guideline #1, with which I concur, stipulates, in part, that:

- a tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed;
- unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate; generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow; and
- a tenant who lives in a single-family dwelling is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

I find that the Landlord had submitted insufficient evidence to establish that the Tenants agreed to weed the gardens at the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenants verbally agreed to weed the garden or that refutes the Tenant's testimony that they did not agree to weed the gardens. As there is insufficient evidence to establish that the Tenants were obligated to weed the garden, I find that the Landlord does not have the right to end the tenancy on the basis of the gardens not being weeded.

I find that the Landlord has submitted insufficient evidence to establish the condition of the grass when Tenant #2 moved into the rental unit in 2015 or when this most recent tenancy began in 2017. I find that the photographs the Landlord submitted from 2013 do not help establish the condition of the yard in 2015 or 2017, as the Tenants do not

agree that those photographs accurately reflect the condition of the grass when they moved in.

On the basis of the photographs both parties submitted from the summer of 2018, I find that the grass in the yard is mowed and clear of debris. I find, therefore, that the Tenants have been mowing the grass as Residential Tenancy Branch Policy Guidelines suggest they should.

Although I accept that the condition of the grass has significantly deteriorated since 2013, I find that it is likely due, in part, to a lack of fertilizer. In the absence of any evidence that indicates the Tenants agreed to fertilize the lawn and in the absence of any reference to fertilizing in Residential Tenancy Branch Policy Guidelines, I cannot conclude that the Tenants were required to fertilize the lawn.

Although I accept that the condition of the grass has significantly deteriorated since 2013, I find that it is likely due, in part, to a lack of water. Even if I accepted that watering was generally considered a part of general yard maintenance, I find that with the current weather conditions in British Columbia it is a commonly accepted practise to limit lawn watering.

I find that any damage to the lawn that can be attributed to limited watering does not constitute extraordinary damage nor does it put the Landlord's property at significant risk, as lawns can typically be rejuvenated over time with water and fertilizer. In reaching this conclusion I was influenced, in part, by the fact that the lawn is still green, although it is in significantly worse condition than it is was in 2013. I therefore cannot conclude that the Landlord has the right to end this tenancy, pursuant to sections 47(1)(d)(iii) or 47(1)(f) of the *Act*, on the basis of the condition of the lawn.

Section 32(3) of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. As there is no evidence that the Tenants were obligated to fertilize the grass and the deterioration of the grass is likely due, in part, to the absence of fertilizer, I cannot conclude that the Tenants are currently obligated to repair the grass. I therefore find that the Landlord does not have the right to end this tenancy, pursuant to section 47(1)(g) of the *Act*, on the basis of the condition of the lawn.

On the basis of the undisputed evidence I find that Tenant #2 cut down a bush in 2016. I find that there is insufficient evidence to establish that he did so without the consent of

the Landlord. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Landlord's testimony that he did not agree to cutting the bush or that refutes Tenant #2's testimony that the Landlord agreed to cutting the bush because it had been damaged by snow. I find that the Tenant #2's testimony that this bush was cut because it was damaged by snow is credible, given the weather in the location of the rental unit. I therefore cannot conclude that the Landlord has the right to end this tenancy, pursuant to sections 47(1)(d)(iii), 47(1)(f), or 47(1g) of the *Act*, on the basis of the bush that was cut down.

On the basis of the undisputed evidence I find that Tenant #2 installed a door into a family room. On the basis of the photographs submitted in evidence I find that the installation of this door has not caused extraordinary damage to the rental unit nor has it put the Landlord's property at significant risk and I therefore find that the Landlord does not have the right to end this tenancy, pursuant to sections 47(1)(d)(iii) or 47(1)(f) of the *Act*, on the basis of the door. I find that any damage caused by the installation of this door can be repaired with limited time and expense.

Residential Tenancy Branch Policy Guideline #1 stipulates, in part, that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. It further stipulates that if the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant.

I find that the Tenants are obligated to remove the door into the family room and to repair any damage relating to that installation prior to vacating the rental unit, pursuant to section 37(2)(a) of the *Act.* As the damage this has caused to the rental unit is very minor, I cannot conclude that the repair must be made prior to the end of the tenancy and I therefore find that the Landlord does not have the right to end this tenancy, pursuant to section 47(1)(g) of the *Act*, on the basis of the door.

Section 32(1) of the *Act* stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) of the *Act* stipulates that 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.

Section 32(4) of the *Act* stipulates that a tenant is not required to make repairs for reasonable wear and tear.

I find that there is nothing in the *Act* that requires a tenant to remove excessive amounts of snow from the roof of a rental unit or from areas surrounding a rental unit in an attempt to protect it from damage.

Residential Tenancy Branch Policy Guideline #1 suggests that a tenant in a single-family dwelling is responsible for routine yard maintenance, including clearing snow. In my view the intent of that guideline is to clarify that the tenant, rather than the landlord, is responsible for removing snow to ensure there is access/egress to a rental unit. It would be illogical, in my view, to conclude that the guideline suggests a tenant is responsible for removing snow from the roof and other areas of the residential complex for the purposes of protecting the integrity of the residential complex. I find that removing snow loads that may impact the integrity of the residential complex is the responsibility of the landlord, in accordance with section 32(1) of the *Act*.

Even if I accepted the Landlord's submission that the landing leading to the veranda of the rental unit sank because of an excessive snow load, I do not find that it was the Tenants' responsibility to ensure all of the snow was cleared from the landing.

In concluding that it was not the Tenants' responsibility to ensure all of the snow was cleared from the landing I was influenced, in part, by the absence of evidence that shows the Tenants were aware that the landing was incapable of sustaining such heavy loads. In the absence of some specific instructions regarding the need to clear the entire landing I find it unreasonable for the Landlord to expect the Tenants to understand the need to do so.

In concluding that it was not the Tenants' responsibility to ensure all of the snow was cleared from the landing I was influenced, in part, by the undisputed evidence that the Tenants did maintain a path that provided access/egress to the rental unit via this landing. In the absence of evidence, such as a photograph of the snow load on the landing itself, I have insufficient evidence to conclude that the Tenants' did not maintain a reasonable path across the landing.

As the Landlord has failed to establish that the Tenants' did not maintain a reasonable path across the landing or that they were aware the entire landing needed to be cleared of snow, I find that the Landlord has failed to establish that the Tenants have put the

Landlord's property at significant risk or that they have caused extraordinary damage to the rental unit. I therefore find that the Landlord does not have the right to end this tenancy, pursuant to sections 47(1)(d)(iii) and 47(1)(f) of the *Act*, on the basis of the landing.

As the Landlord has failed to establish that the Tenants' were obligated to keep the entire landing clear of snow, I find that the Landlord has failed to establish that Tenants are responsible for repairing any damage that was caused by an excessive amount of snow. I therefore find that the Landlord does not have the right to end this tenancy, pursuant to sections 47(1)(g) the *Act*, on the basis of the landing.

On the basis of the undisputed evidence I find that the Landlord provided the Tenants with a lawn mower; that the lawn mower stopped working sometime in the summer of 2018; that the Tenants discarded the lawn mower before the Landlord could determine if it was repairable; and that the Tenants replaced the lawn mower with a mower that the Landlord considers to be of poorer quality.

As the Tenants replaced the Landlord's lawn mower, I cannot conclude that they placed the Landlord's property at significant risk by discarding the lawn mower that was not working. In reaching this conclusion I was influenced, in part, by the absence of evidence that shows the discarded lawn mower was repairable (at a reasonable cost). Even if I accepted the Landlord's submission that his lawn mower was worth more than the replacement lawn mower provided by the Tenants, the difference in the value of the two mowers could not, in my view, meet the threshold of ending the tenancy pursuant to section 47(1)(d)(iii) of the *Act*.

I find that discarding a lawn mower that is no longer functioning does not constitute damage to a rental unit or the residential property. In my view the terms rental unit and residential property refer to the residential land and structures on the land. They do not, in my view, include tools that the Landlord has left on the property. I therefore cannot conclude that the Landlord has the right to end the tenancy, pursuant to section 47(1)(f) of the *Act*, on the basis of the lawn mower.

Even if I were to conclude that the Tenants are obligated to replace the lawn mower they discarded with a lawn mower of similar quality, I would not conclude that the Landlord has the right to end the tenancy, pursuant to section 47(1)(g) of the *Act*, on the basis of the lawn mower. A landlord only has the right to end a tenancy if a tenant fails to repair damage to the rental unit or other residential property. As has been previously stated, a lawn mower is not a rental unit or residential property.

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to establish grounds to end this tenancy for the grounds stated in the One Month Notice to End Tenancy for Cause. I therefore grant the Tenants' application to set aside the One Month Notice to End Tenancy for Cause.

Conclusion

The One Month Notice to End Tenancy for Cause is set aside. I order that this tenancy continue until it is ended in accordance with the *Act.*

The Tenants have established the merit of their Application for Dispute Resolution. I therefore authorize the Tenants to reduce one monthly rent payment by $100.00 as compensation for the fee paid to file this Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 18, 2018

Residential Tenancy Branch