



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANHART COMMUNITY HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on November 29, 2018, wherein the Tenant requested to cancel a 1 Month Notice to End Tenancy issued on November 19, 2018 (the "Notice") as well as an Order restricting the Landlord's right to enter the rental unit.

The hearing was conducted by teleconference at 11:00 a.m. on January 11, 2019.

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. The Tenant appeared on his own behalf. The Landlord was represented by the Director, C.W., the Working Director, E.G., and the Project Manager in Community Engagement, L.M.

The parties agreed that all evidence that each party provided had been exchanged. No 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 Branch Rules of Procedure*. However, not all details of the respective 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-Delivery of Decision by Email

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to both parties and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be restricted from entering the rental unit?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

E.G. testified on behalf of the Landlord. She stated that she is the employee with the most contact with the tenants of the rental building.

E.G. confirmed that the tenancy began January 1, 2018. The rental unit is a single room occupancy unit in a privately owned property run by a charity. Monthly rent is \$450.00.

The Landlord issued the Notice on November 19, 2018. The reasons cited in the Notice are that the Tenant, or a person permitted on the property, has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. In the Details of Cause section the Landlord provided the following:

On November 7/18 and on previous occasions in 2018, tenant refused landlord entry to suite for routine maintenance and inspection purposes. Advance, written notice was posted prior to each entry attempt and, specifically, on November 5/17.

E.G. confirmed that the 17 reference in the date, in the Details of Dispute section reproduced above, was a typographical error as the Tenant was given notice of entry on November 5, 2018 not 2017.

The Landlord also sent a letter to the Tenant on November 19, 2018 in which the Landlord wrote the following:

On November 5/18, we posted notice on your suite door for this month's standard pest control inspection. Our notice indicated that our pest control contractor's scheduled site visit on November 7/18 would include your suite. Our staff and contractor arrived at your door during the times posted on the notice.

When we knocked and entered your suite, you were present in the room with a guest. Your guest requested time to dress and our staff agreed to wait in the hallway.

As our staff stepped out of your room to wait, you were asked to immediately remove the bicycle parts hanging on the overhead sprinkler system. Our staff notes that the last time your room was inspected, during the annual City SRO inspection in August, you were informed by the City inspector and our staff that overhead sprinkler pipes are not to be used for hanging belongings, due to fire code regulations. You were asked to remove bicycle parts from the sprinkler system at that time as well.

On November 7th, while our pest control contractor and staff waited in the hallway, you locked your door and refused further entry. Your action is in violation of your responsibilities as a tenant to allow landlord access to your room for maintenance and inspection purposes. Our staff informed you of your tenancy violation, by speaking through your door, and, as you had refused routine inspection entry on more than one previous occasion, you have been clearly informed of your responsibilities as a tenant and our rights as a landlord.

E.G. testified that she was present when the Tenant refused entry to the rental unit on November 7, 2018.

When I asked E.G. to provide details as to any other dates the Tenant allegedly refused entry in 2018 (as indicated on the Notice) she stated that she would have to check the records as she didn't think she would have to provide that information.

I reminded the Landlord that it was the Landlord's responsibility to present evidence in support of the Notice as it was the Landlord who wished to end the tenancy. I also reminded the Landlord that one of the principles of natural justice was that the Tenant has the right to know the claim against them, the right to review any evidence submitted against them, and the opportunity for a meaningful response. E.G. became upset at my comments and alleged I was not listening to her or giving her an opportunity to present the Landlord's case.

During E.G.'s testimony she confirmed that L.M. was simultaneously accessing the Landlord's computer system and records to assist E.G. in providing testimony as to those other dates. I reminded E.G. that she had been affirmed to give her testimony and was not to be coached or assisted by others in this regard.

E.G. then asked that L.M. be affirmed to provide evidence as to the information on the computer log. E.G. confirmed that the records indicated that the Tenant refused entry to the rental unit on the following dates:

- June 15, 2018
- July 7, 2018
- August 18, 2018

When I asked L.M. to provide details as to those dates she stated that she was not present and therefore was not able to provide any relevant testimony.

The notice of entry for the November 2018 entry was not provided in evidence for my consideration. E.G. confirmed that she also did not have a copy of the notice of entry in front of her and stated it was their “standard notice for pest control and maintenance”.

E.G. confirmed that she was present on November 7, 2018 when the Tenant most recently denied the Landlord access. She stated that she attended with a pest control contractor. She further stated that she knocked on the Tenant’s door and then opened the door (as it was unlocked) and started entering the room when it became obvious the Tenant was there with a guest. E.G. further testified that the Tenant’s guest was not clothed and the Tenant asked for time for the guest to get dressed. E.G. stated that the Landlord did not try again as this was a “reoccurring issue”.

For each of the previous incidents in 2018 E.G. confirmed she did not have any personal recollection and needed to consult her notes from the computer log.

E.G. testified she was also present on June 15, 2018. She was not able to confirm when the notice of entry was posted, only to state that they “would have posted a notice of entry more than 24 hours prior to the entry”. She stated that the log indicated that the Tenant refused pest control at the time and that the staff suspected the Tenant had others overnight at the time. The notice of entry for the June 15, 2018 entry was also not provided in evidence for my consideration.

E.G. confirmed that she also did not have a copy of the notice of entry for the July 7, 2018 entry in front of her, and stated that it “would have been a standard notice”. E.G. read from the computer log as follows: “The Tenant refused pest control inspection. second refusal. Tenant has not acknowledged 30 day notice sent by registered mail.” E.G. stated that the “30 day notice” referred to in the computer log was a previous 1 month notice to end tenancy for cause, not the notice of entry. Again, the notice of entry for the July 7, 2018 entry was not provided in evidence nor was E.G. able to refer to it and provide testimony as to its contents.

E.G. also confirmed that she was present on August 18, 2018 when she claims the Tenant refused entry to the rental unit. E.G. again read from the log which she said indicated that notice was posted for pest control inspection on August 18, 2018. A representative of the pest control company, as well as the tenant leader, were present with E.G. during this inspection. The staff knocked on the door and then opened the door at which time the Tenant refused entry and slammed the door.

E.G. also stated that the log also indicated that this incident was noted for a hearing before the branch in August of 2018 (the file number for that hearing is noted on the unpublished cover page of this my Decision. E.G. also confirmed that the Landlord’s organization had a name

change in the fall of 2018 such that the previous hearing noted a different Landlord's name.) She also confirmed that the Tenant's application to cancel the Notice was successful at that time.

E.G. confirmed that she did not have a copy of the notice of entry for the August 2018 entry in front of her. She stated again that it was "standard practice to give more than 24 hours' notice of such entry".

After nearly an hour of hearing the Tenant was given an opportunity to respond to the Landlord's submissions. He confirmed that he initially refused the Landlord entry to the rental unit on November 7, 2018 because he had a guest in his room and they were not "decent" at the time. He stated that the door was opened by the Landlord and he quickly closed it. D.G. confirmed that he received 24 hours written notice of entry but he did not realize that it was going to be at 9:00 a.m. in the morning and as such he and his guest were not ready.

D.G. stated that he asked the Landlord for some time to get dressed. He then stood in the hallway for half an hour and then went back into the room and waited and they did not come back.

D.G. confirmed that he could not recall the July 2018, or the August 2018 entry referenced by the Landlord.

D.G. confirmed that he could only recall the June 2018 entry. He stated that his place was a bit unkempt and he needed some time to make it ready for the Landlord's entry. Again he testified that he suggested that they give him a moment to clean up and come back. He also noted that he needed time to pull things away from the wall for the pest inspection. He stated that they did not come back.

The Tenant stated that after the November 7, 2018 incident (when his girlfriend and he were not dressed), he received the 1 Month Notice to End Tenancy for Cause. He said he did not understand why because he asked for a minute to get dressed and then they didn't come back.

Analysis

After consideration of the testimony and evidence of the parties and on a balance of probabilities I find as follows.

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy.

In this case the Landlord seeks to end the tenancy on the basis of their allegation that the Tenant refuses the Landlord entry to the rental unit.

A Landlord's right of entry is provided for in section 29 of the *Act* which reads as follows:

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).

Although I accept the Landlord intended to enter the rental unit for a reasonable purpose, I was not provided with copies of the notice of entry for any of the dates the Landlord alleges the Tenant refused entry. As such I am not able to make findings as to whether the particular notices complied with section 29. Further, although the Landlords' representative testified as their normal/usual practice of providing notice at least 24 hours prior to the entry, I require *evidence* with respect to the *specific dates* giving rise to the Landlord's desire to end this tenancy. I cannot base my decision on assumptions that the Landlord complied when deciding such a significant issue as whether to continue or end a tenancy.

I accept the Tenant's evidence that on the June 2018 entry he simply asked the Landlord to give him a moment to prepare his rental unit for pest control. Similarly, I accept his evidence that he also asked for time for his guest to get dressed during the November 2018 incident. I also accept his evidence that the Landlord attended at 9:00 a.m. on that date and did not return after he asked them for time to dress.

The Landlord alleged the Tenant failed to grant entry in July and August of 2018; however, I find the Landlord has failed to provide sufficient evidence of these incidents for me to conclude the Landlord provided proper notice, or that the Tenant was unreasonable.

While a Tenant must permit the Landlord entry when the Landlord complies with section 29, a Landlord must also be reasonable in the circumstances. Although the *Act* permits entry between 8:00 a.m. and 9:00 p.m., a landlord should give a narrower time slot, such as two or four hours, of their intended entry so as to minimize any inconvenience to tenants, particularly when a tenant is expected to move furniture or other items to prepare the unit for pest treatment.

Similarly, if a tenant doesn't promptly answer the door, the landlord should not instantly enter the unit as it may be that the tenant is using the washroom, dressing, or otherwise not immediately available. When a Tenant asks for a moment to prepare themselves, their guests, or their unit, and provided that the Tenant does not make the Landlord wait an inordinate amount of time, it is reasonable for the Landlord to honour this request (except when an emergency necessitates otherwise).

The Notice alleges that the Tenant "seriously jeopardized the health or safety or lawful right of another occupant or the Landlord", this wording mirrors section 47(1)(d)(ii) of the *Act* which reads as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- ...
(d) the tenant or a person permitted on the residential property by the tenant has
...
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The use of such wording in the legislation is purposeful and reflects the standard of proof required for a landlord to end a tenancy for these reasons.

In all the circumstances I find the Landlord has failed to prove, on a balance of probabilities, that the Tenant *seriously jeopardized* the health or safety or lawful right of another occupant or the Landlord and **I therefore cancel the Notice. The tenancy shall continue until ended in accordance with the Act.**

I find that the Tenant has failed to provide sufficient evidence to support a finding that the Landlord should be ordered to comply with section 29 of the *Residential Tenancy Act* or that the Landlord's right to enter the unit should be restricted. The Landlord is reminded to follow section 29 of the *Act* in terms of entry to rental units and is further encouraged to exercise reasonableness in such situations.

The parties are reminded that hearings before the branch are governed by the *Residential Tenancy Branch Rules of Procedure*. Although the parties are encouraged to review and consider all the *Rules*, *Rules* 2.5, 3.7 and 3.15 deal with the parties' responsibilities with respect to evidence and provide as follows:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Further, the parties are reminded that hearings before the branch are conducted by teleconference and the parties are expected to provide first hand testimony of the

circumstances giving rise to, or in response to, the application. While hearsay is admissible, it is given less evidentiary weight than first hand testimony.

Conclusion

The Tenant's Application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's Application for an order that the Landlord be restricted from entering the rental unit is dismissed for lack of sufficient evidence.

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: January 15, 2019

Residential Tenancy Branch