



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINNACLE INTERNATIONAL REALTY II INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, DRI, LRE, OLC, RP, RR, MNDCT, FFT

Introduction

On February 27, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to Dispute a Rent Increase pursuant to Section 41 of the *Residential Tenancy Act* (the “Act”), seeking to Restrict the Landlord’s Right to Enter pursuant to Section 70 of the *Act*, seeking an Order to Comply pursuant to Section 62 of the *Act*, seeking a Repair Order pursuant to Section 32 of the *Act*, seeking a Rent Reduction pursuant to Section 65 of the *Act*, seeking Monetary Compensation pursuant to Section 67 of the *Act*, and seeking to Recover the Filing Fee pursuant to Section 72 of the *Act*.

On March 15, 2019, the Tenants amended their Application seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Act*.

The Tenants attended the hearing. J.P. and E.L. attended the hearing as agents for the Landlord. All parties provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and evidence to the Landlord by registered mail, but they were not sure when they did this. The Landlord confirmed that they received this package in early March 2019. The Tenants also advised that they served their Amendment to the Landlord by registered mail, but they were not sure when they did this either. The Landlord confirmed that they received this package on March 17, 2019. As I am satisfied that the Landlord was served in accordance with Sections 89 and 90 of the *Act*, I find that the hearing could proceed accordingly.

The Landlord advised that they served their evidence to the Tenants by registered mail on March 29, 2019. The Tenants confirmed that they received this evidence, that they

had read and reviewed it, and that they were prepared to respond to it. Although this evidence was not served in compliance with the timing requirements of Rule 3.15 of the Rules of Procedure, as the Tenants had reviewed this evidence and were prepared to respond to it, I have accepted and considered this evidence when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application. However, it appears as if the Tenants have applied on the same issues that previous decisions already addressed. The Tenants were cautioned that if a previous decision on a matter has already been rendered, a future Application on the same issues would fall under the doctrine of *res judicata*, which is a legal principle that prevents the same claims from being heard again (the relevant decisions are listed on the first page of this decision).

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on August 1, 2009. Rent was currently established at \$1,239.00 per month, due on the first of each month; however, a rent reduction of \$150.00 per month was ordered as per a previous decision. A security deposit of \$475.00 was paid.

Both parties agreed that the Notice was served by being posted to the Tenants' door on March 14, 2019. The reasons the Landlord served the Notice are because the "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" and for "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order." The Notice indicated that the effective end date of the Notice was May 1, 2019.

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. In addition, the focus of the decision will be on the reason that the "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."

J.P. advised that the Tenants had changed the locks to the rental unit without authorization and did not provide them with a key. After the last dispute resolution hearing, the Tenants did finally provide the Landlord with a key to the rental unit. He stated that they have been serving the Tenants with the proper written notice to enter the rental unit in accordance with the Act; however, Tenant B.W. continually refuses to allow the Landlord or contractors to enter the rental unit. He advised that B.W. is large and imposing, that he stands at the doorway and does not allow entry, and that he constantly verbally and physically intimidates E.L. to the point where she is concerned for her safety. He submitted copies of text message as documentary evidence to support his claims of B.W.'s behaviour. He also submitted that they have recently posted notices on the Tenants' door, dated February 18, 2019, March 4, 2019, and March 11, 2019, to enter to complete repairs in accordance with previous decisions. However, again, B.W. has prevented the Landlord from entering the rental unit.

E.L. advised that each time a notice is given for entry, she will attempt to enter the rental unit at the stated time, usually with a contractor, and B.W. would bar entry. She stated that she then does not enter as she is scared for her safety.

Tenant T.K. acknowledged that the Landlord has served them notices to enter the rental unit and advised that they let the Landlord have access to the rental unit. However, she stated that the notices pertain to fixing baseboards and the Landlord will not fix the issues with the kitchen. She stated that she wants an Arbitrator to make a decision to have the kitchen repaired properly.

Tenant B.W. advised that a notice stating a contractor would be entering to replace kitchen cabinets was served, and this person “destroyed” the kitchen. He provided contradictory testimony to T.K. and acknowledged that he had been barring entry to the rental unit, despite being given the proper written notice for entry, because the last contractor covered up a mouse infestation. He confirmed that he also refused to allow the Landlord to enter the rental unit for the notices served on February 18, 2019, March 4, 2019, and March 11, 2019. He stated that he had a right to prevent the Landlord from entering as the purpose for the Landlord entering the rental unit was not related to doing kitchen repairs as was previously ordered by an Arbitrator. As well, he advised that he did not allow them entry because they were not accompanied by a pest control company. He stated that he did not physically prevent the Landlord from entering nor did he swear at the Landlord; however, he did agree that he prevented the Landlord from entering the rental unit. B.W. also added that contractors would not enter the rental unit due to the presence of mouse feces.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 29 of the *Act* requires that the Landlord provide the proper written notice of at least 24 hours to enter a rental unit, and the entry must be for a reasonable purpose. Once this notice is served, it is the Landlord’s right to enter the rental unit.

Section 31 of the *Act* prohibits the Tenants from changing the locks without the Landlord’s authorization.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a stated 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.”

With respect to the Notice served to the Tenants, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that this Notice meets the requirements of Section 52.

With respect to the validity of the reason indicated on the Notice that the “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”, I find it important to note that the consistent evidence before me is that the Landlord exceeded the requirements of the *Act* by providing the Tenants with 48 hours notice, on the notices dated February 18, 2019, March 4, 2019, and March 11, 2019, to enter the rental unit to conduct repairs. However, B.W. has refused entry each time.

Furthermore, the Arbitrator in the decision dated January 28, 2019 was satisfied that the “Tenants have not been cooperative with the Landlords” as B.W. acknowledged that “he denied the Landlords access to the rental unit twice as well as on the notices of entry and correspondence from the contractor and pest control.”

In addition, it appears as if the Tenants believe that they have a right to be present in the rental unit during the times stipulated on the notices and that the Landlord cannot enter the rental unit if they are not there. In the decision of January 28, 2019, it was reiterated that “the Landlords have the right to enter the rental unit in accordance with section 29 of the *Act*. The Tenants do not have to be present when the Landlord enter as that is not a requirement of the *Act*.” The Tenants were also cautioned in this decision that their continual refusal to allow the Landlord access to the rental unit, contrary to the *Act*, may adversely affect their tenancy.

During the hearing B.W. was given multiple opportunities to provide testimony with respect to the reason why the Notice was served, being that entry to the rental unit was refused by the Tenants even though the proper written notices to enter were served pursuant to the *Act*. However, each time, B.W. would become increasingly heated and agitated and explain that his rationale for denying entry was justified as it was his belief that the Landlord could not enter unless the purpose was related to rectifying the alleged mouse infestation issue.

B.W. was reminded that the reason for the Notice was due to his refusal to allow entry, and he was provided with opportunities to compose himself and attempt to submit relevant testimony with respect to this issue.

Tenant T.K. understood the nature of the reason for why the Notice was served and attempted to explain this to B.W.; however, he continually wanted to provide testimony with respect to the mouse infestation, even though a decision had already been rendered on this issue on May 23, 2018. B.W. advised that he wanted his witnesses to testify with respect to the mouse infestation. However, as this was unrelated to the reasons for service of the Notice, being that he is not permitted to restrict the Landlord's access to the rental unit, I did not allow the witnesses to testify as they would be providing testimony that was irrelevant to this specific issue.

It appears to be B.W.'s belief that he is justified in preventing the Landlord from entering the rental unit because it is his opinion that the Landlord is not complying with the order in the decision dated May 23, 2018. However, it was evident in the decision dated January 28, 2019 that "The prior arbitrator already ordered the Landlords to replace or repair all the flooring and walls in the Tenants' rental unit that have been damaged by rodent activity" and that "the Landlords have taken steps to have the issues raised", but B.W. refused to allow the Landlord to enter the unit to attempt to comply with that order.

When reviewing the totality of the evidence before me, and the decision dated January 28, 2019, it is clear that the Landlord has made several attempts to access "the rental unit to measure flooring and cabinets" to complete repairs as ordered on May 23, 2018. As well, the Landlord has made attempts to have pest control enter the rental unit. However, it was noted that the Tenants were "uncooperative" and that B.W. acknowledged that he denied the Landlord access to the rental unit each time.

While the Tenants' position is that they are dissatisfied with the Landlord's attempts to rectify the mouse infestation issue and they want the work to be conducted "by an independent contractor of their choosing", the issue before me pertains to B.W.'s continued refusal of access to the rental unit when the Landlord has complied with the *Act* and provided the proper written notice for entry.

Based on B.W.'s past actions of refusing entry, I find that there is a consistent pattern of behaviour displayed by B.W. that is contrary to the *Act* and restricts the Landlord's right to enter the rental unit to conduct repairs or ensure the rental unit is maintained in a stated of decoration that complies with health, safety, and housing standard required by law. I find that the questionable nature of B.W.'s behaviours is reinforced by his action of changing the locks without permission from the Landlord and not providing a key. Even if I were to find that the reason for service of the Notice was not justified and that the tenancy should continue, I am not satisfied that B.W. would not persist in refusing

the Landlord's right to enter the rental unit in future if it was his unfounded belief that the purpose for entry was not to his liking.

Ultimately, I am satisfied that the Landlord has substantiated that B.W. has acted in contradiction of the *Act* by refusing entry to the rental unit repeatedly, over the course of at least six months despite the proper written notice. Furthermore, based on a balance of probabilities, I find that B.W. will more likely than not continue to do so in future. Consequently, I am satisfied that the "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" and that this behaviour was justification to warrant the Notice being issued.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession that takes effect at **1:00 PM on May 1, 2019 after service of this Order** on the Tenants.

As the Tenants were unsuccessful in this Application, I find that they are not entitled to recover the \$100.00 filing fee from the Landlord.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective at **1:00 PM on May 1, 2019 after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 11, 2019

Residential Tenancy Branch