



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0840625 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated April 30, 2019 ("One Month Notice"). The Tenant also applied for an order for emergency repairs involving the security of the building, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement, regarding the building security.

The Tenant and two co-owners of the building, A.R. and C.L. ("Landlords"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their relevant written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Are the Landlords entitled to an order of possession?
- Is the Tenant entitled to an order for Emergency Repairs?
- Is the Tenant entitled to an Order that the Landlords must comply with the Act, regulation and tenancy agreement?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2012, with a monthly rent of \$1,150.00, due on the first day of each month. They agreed that the current monthly rent is \$1,300.00. The Parties agreed that the Tenant paid a security deposit of \$575.00, and no pet damage deposit.

Re One Month Notice

The Tenant submitted a signed copy of the One Month Notice dated April 30, 2019. The Landlords testified that they had served the Tenant on April 30, 2019, by posting it on her door. The One Month Notice gives June 30, 2019 as the effective vacancy date. The Landlord checked the boxes on the One Month Notice to indicate the grounds of the eviction as being:

The tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The Landlords also checked the following grounds for issuing the One Month Notice:

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property, and
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

The Parties agreed that the Tenant was involved in an incident on April 25, 2019, when her co-worker obtained access to the residential property and knocked on the Tenant's apartment door. The Tenant testified that when she opened her door, the co-worker punched her in the face, so the Tenant said she defended herself and pushed back, such that the disturbance spilled into the hallway.

The Landlord, C.L., testified that he lives in the building. He said:

I came down the stairs and heard crashing and yelling. I called 911. I saw three people fighting. I thought one was [the Tenant's] partner. I took a photo and waited for the police. We got the police report through access to information and it confirms that the tenant didn't want to pursue charges. That conflicted with what the Tenant said re her being attacked.

The Tenant said that she believes the co-worker has mental health issues. The Tenant said: "[The co-worker] clearly has mental health issues. I did not wish to press charges. She has a child. She doesn't live in Canada; she's here on a VISA. She initiated an attack, because she has mental health concerns." The Tenant said she does not know how the co-worker knows where she lives, that she may have followed her home one day. The Tenant said that she did not let the co-worker into the building. The Tenant said she believes the co-worker was able to enter the building, because the outside doors do not lock properly.

The Landlord also said that the mirror in the common area hallway was broken in the incident. The Tenant said that she replaced the mirror within a week of the incident.

The Landlord went on to say that the skirmish "didn't look like self-defence. It looked like the Tenant was choking someone. We can't have that kind of thing going on in the building."

The Tenant submitted a written statement from her boyfriend about the incident. This states:

On the morning of April 25, 2019 [the Tenant] and I were awoken by a knock at

the door. I answered, and there was a young woman asking 'for the girl who lived here,' and I responded that she was sleeping. The woman turned around and left, and I returned to tell [the Tenant] about the encounter. Shortly after, there was another knock at the door while I was using the washroom and [the Tenant] answered. I heard a commotion in the hallway, so I opened the front door of [the Tenant's] suite to find [the Tenant] being attacked by the same woman from earlier. I also saw another man standing in the lobby that was watching and filming the attack. I promptly intervened to diffuse the situation, and removed the woman from the premises. The police were called shortly after the attack.

Emergency Repair Order

The Tenant said that this incident highlighted a problem with the residential property, that being that "the building is insecure." The Tenant said that a neighbour, J.O., told the Tenant that the neighbour was on her way to work that day and saw the Tenant's co-worker enter the building "without being buzzed in or having a key." The Tenant submitted a signed letter from this neighbour, which states:

On 19Apr25, I was in my car outside of our building at [property address] sometime between 10:00 and 10:30 a.m. when I noticed a dark haired female with a long sweater walk up to the front door of our building and entered without using the intercom system. I assumed she must have stuck something in to prevent door from shutting/locking to re-enter the building.

With regards to the occupant of [rental unit number] I have always had positive interactions with [the Tenant] as a neighbor.

Signed

Dated May 10/19

The Tenant said: "[The co-worker] came in a dress, and did not appear as if she would be intending to fight, although she initiated the altercation".

In the hearing, the Landlords said:

We didn't get any complaints that the door was broken. I live in the building and didn't know it was broken. We had [local locksmith] come and check the door [after the incident] and it's okay.

The front door and locks were replaced in July 2016 - we replaced the whole front facade, doors and locks in 2016. The evidence that the Tenant submitted – letters from friends going back to 2013 is irrelevant.

The Tenant submitted an email statement from a former tenant of the residential property, D.P., in which D.P. gives the Tenant a good character reference and comments on the security of the residential property. D.P. said he lived in the residential property from November 2015 to May 2018. He said the only issues with his tenancy were due to security. He said:

My own storage locker had been broken into twice. . . .Often the door at the main entrance of the building would not close and lock properly. One could easily gain access to the building by merely pulling on the door handle. Also the side door, near the storage lockers on the East side of the building would regularly not close as intended. These issues with the doors were never fully resolved, even until the day I left occupancy.

The Tenant submitted another character reference from another tenant of the residential property, N.A. She said she was surprised to hear that the Tenant was asked to leave the building by the Landlords, as she has been the Tenant's neighbour for about four years and is unaware of any other issues that the Tenant has had in the building. N.A. also said:

On Sunday April 28th around 10:30am . . . I came home to find the front door shut but unlocked. I was able to simply just open the door without my key. I then notified one of our landlords. It was then fixed awhile after. We have had continued issues for the last couple of years with the locks on our front doors not working, rendering it open to the public without the use of a key or just not useable at all. We have had several occasions of a locksmith or landlord in to try and solve the problem only for it to happen again. This is obviously of serious concern as it appears that we have not had a permanent solution to ensure that our doors remain locked for the safety of all in the building.

The Tenant also applied for an order that the Landlord comply with the Act, regulation and/or tenancy agreement. The Tenant confirmed in the hearing that this related to the same issue for which she applied for emergency repairs. Accordingly, I have considered these two applications under the emergency repair category.

Analysis

One Month Notice

Based on the evidence before me overall, and on a balance of probabilities, I find that the Tenant did not invite the co-worker into the building or initiate the incident in any way. I find that the Tenant was a victim of an attack by a seemingly unstable person who entered the building without invitation or authorization. I, therefore, do not find the Tenant responsible for the incident that occurred in the residential property on April 25, 2019.

Policy Guideline 32 ("PG #32") "Illegal Activities" is "intended to clarify relevant issues such as the meaning of 'illegal', what may constitute 'illegal activity' and circumstances under which termination of the tenancy should be considered."

PG #32 states:

The term 'illegal activity' would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

For example, it may be illegal to smoke and/or consume an illicit drug. However, unless doing so has a significant impact on other occupants or the landlord's property, the mere consumption of the drug would not meet the test of an illegal activity which would justify termination of the tenancy.

On the other hand, a chemical drug manufacturing operation (e.g methamphetamine lab), would form the basis for terminating the tenancy if it would jeopardize the landlord's ability to insure his or her property.

A breach of a provision of the Legislation may or may not constitute an illegal activity depending on the severity of the breach in respect of the criteria set out above.

I find that PG #32 also applies to the Landlords' claim that due to this incident, the Tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant." I find that one incident for which the Tenant was not found responsible does not equate to significantly interfering with or unreasonably disturbing other tenants or the Landlords.

Based on the evidence before me overall, as well as PG #32, I find that the incident that caused the Landlords to issue the One Month Notice is not serious enough to justify ending the tenancy. Accordingly, I grant the Tenant's application to cancel the One Month Notice. The One Month Notice is hereby cancelled and is of no force or effect.

Emergency Repair Order

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are made for the purpose of repairing:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) **damaged or defective locks that give access to a rental unit,**
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

[emphasis added]

Section 32(1) of the Act requires a landlord to provide and maintain the residential property in a reasonable state of repair. Based on the evidence before me, overall, including that regarding the incident with the Tenant's co-worker, I find on a balance of probabilities that the Landlords have breached section 32 of the Act, by failing to make

emergency repairs to the residential property. As a result, I order the Landlords to take immediate action to complete the necessary remedial work to the locking mechanisms in question.

I make no finding on the reduction in the value of the tenancy for the malfunctioning door locks. However, the Landlords are cautioned that the Tenant may apply for monetary compensation for the reduction in the value of the tenancy should the door locks continue to malfunction.

The One Month Notice is hereby cancelled and the tenancy continues until ended in compliance with the Act.

Conclusion

I found that the Landlords were unsuccessful in substantiating the grounds for the One Month Notice, so I cancel the One Month Notice and order that the tenancy continue until ended in accordance with the Act.

The Landlords are ordered to complete necessary remedial work to ensure that the locking mechanisms that allow people entry into the residential property are working properly, as soon as possible.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 19, 2019

Residential Tenancy Branch