



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER TRI-TEL REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated November 8, 2019 ("One Month Notice"), for a monetary claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenants, A.C. and M.M., and the Landlords, M.H. and A.H., 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 to respond to the testimony of the other Party. 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.

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.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their 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 and any Orders sent to the appropriate Party.

Prior to the Parties' testifying, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on the Application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I, therefore, advised that I will only consider the Tenants' request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenants' monetary claim is dismissed, with leave to re-apply.

Throughout the hearing, the Tenant, A.C. provided 95% of the testimony for both Tenants; therefore, I have referred to the Tenants in this Decision as the "Tenant".

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on October 1, 2018, with a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$750.00, and no pet damage deposit.

The Parties agreed that the rental unit is a basement suite of a house in which there is another suite on the main floor, and that the Tenants occupied the basement suite.

The Parties agreed that the Landlord served the Tenants with a One Month Notice signed and dated November 8, 2019. The One Month Notice has the rental unit address, it was served by being posted on the door on November 8, 2019, the effective vacancy date is December 31, 2019, and the following grounds were checked off as the reason for the eviction:

- The Tenant or a person permitted on the property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In the hearing, the Landlord, A.H., said that on November 1, 2019, at around noon, the Landlord, M.H., attended the residential property to check on the property, when he noticed that the door between the two suites was not locked. He said that the upper suite was vacant – not rented out - at that time. A.H. said:

The door between the [basement] suite and upstairs has a double lock - one on each side, as well as barrel bolts on the suite side and upper floor side. They were not locked. They had been locked, and without a key, they can't be unlocked. Therefore, the situation was [M.H.] had gone to the property, knocked on the [rental unit] door, which was not secured. . . the door opened and basically, he took a picture of the open door and called me.

A.H. explained that the suites are connected by an internal stairway open to the main floor. There is a door between the units and the key from upstairs only unlocks the upstairs side, and the key from downstairs only unlocks the downstairs side; both locks can only be opened with their respective, separate key. There is no door knob.

A.H. said that the Tenant claimed M.H. was entering the rental unit illegally – without the required notice of entry. In a written statement, A.H. said that on November 1, 2019, M.H. found the door from the garage into the house was unlocked.

He proceeded downstairs to the internal door and after knocking, pushed the door and it opened. He did not enter the suite but instead took a picture of the partially open door. He went back to unlock the front door, then returned to the internal stairway connecting the suites, and noticed [the Tenant] was closing the door, while coming down the stairs. He asked why the door is unlocked and tried to stop [the Tenant from] closing the door by putting his foot against the bottom

section of the door. [The Tenant] started swearing and forcefully closed the door. That is when [M.H.] called me.

Upon my arrival. . . checking on other items, we noticed the thermostat was set at about 77 degrees. This was turned back to 72 degrees, and was previously set at 68 degrees on Oct 14th, 2019.

At about 12:40 [the Tenant] came to the front door of the main house and asked what's up, and why was the owner trying to enter his suite.

Before addressing what ensued, I should point out that we have had an ongoing issue since August with [the Tenant]. The previous tenant Rob [T.], gave [the Tenant] the garage door remote and presumably another key for the upper floor which Rob had vacated. [The Tenant] without permission from myself . . . or [M.H.] proceeded to use the garage. When confronted, he pleaded for the use until his old car was gone and to keep their new vehicle safe and off the street.

After substantial pleading, the owner and myself suggested for a short time until the upstairs was rented, he could park his new car in the garage, his other vehicle would have to be parked on the east side of the driveway and eventually back on the road. In the meantime, over the last month, he moved items into the garage without permission and again pleaded that they were items for a garage yard sale that was going to take place in the first week of Oct.

Some email exchanges have ensued, requesting the items in the garage be removed and the privilege of using the garage is revoked and we require the return of the garage door remote. Back to the front door, face to face with [the Tenant], I asked that the remote be returned and the privilege is revoked. Once again, he started his interruption tactics and suggested we had a verbal contract and I argued that it was only a gesture of goodwill on our part. Then he suggested that the remote was in his wife's vehicle and he needs it to finish clearing out the garage. I went and opened the garage door and came back and told him it was open and to move his stuff out and get the remote back to me.

. . .

It was suggested to [the Tenant] that he was the one trespassing in that he was moving stuff from the garage through the house to his suite, which he admitted. When confronted how, he said the doors were unlocked. Again, not by either [M.H.] or myself. I am very aware when I show the home to lock the door to the garage and check the lower door that it is secure. I suggested that I would like

the key he got from Rob which he in turn denied having but a couple of months ago, did say Rob left one for [him]. I later a month ago asked again but he suggested he could not find it.

The conversation lasted about 10 mins. And [M.H.] and I called the [Residential Tenancy Branch] at about 12:50 and spoke to a representative at about 1:15 pm. Our main enquiry was in respect to having the police attend or a statement from myself as a witness participant in the discussion. Also, the process to either file for possession or write a warning letter.

The Landlord said the Tenant was not supposed to have been in the main suite of the residential property, and therefore, "...basically in our opinion he was trespassing. He never told us the truth about the keys that the previous tenant had given him. He was pushing to use more and more of the [residential property] space. He was swearing at the Landlord when the Landlord was there to talk to him about the situation.

The Landlord, M.H., said that the Tenants "...had no right to use a path that they did not rent. They got caught and admitted to it on November 1, but also from documentation submitted by [the Tenant] it appears he had access to the upstairs through a key or through the garage. Likely through the garage, because I ensure the doors are locked. He denies having keys, but he must have to retrieve his mail through the opening slot on the door [of the main suite]. [The Tenant] should not have access to this."

The Tenant said that he had an agreement with the previous tenant, Rob. He said:

We always had the door opened, so our daughters could hang out. They allowed us to use part of the garage. After he moved out can we asked if we could continue to use the garage. We had a garage fob.

I expressed the problem with my mail going through another tenant. It was not secure. When Rob moved out, we had access to garage as [A.H.] allowed it. At that point, [the Landlords] stated that they went every couple days for mail and would place it in the garage for us. We picked up our mail there. After the incident with the eviction notice, I asked them now that I don't have access to the garage, I said I'd like them to put up a mail box for access to my mail. They agreed.

I never went up to the suite. I don't have a key. Later the key was upstairs on the island in Rob's suite. They found it there, not sure what their issue is with a key.

As for my side of the deadbolt being unlocked – there's no reason to lock it with no one upstairs. That's my part of it.

The Landlord, A.H., said:

Basically, to clarify, yes, Rob had given the garage door opener to [the Tenant]; it was after we found [the Tenant's] car in the garage that we had a discussion about use of the garage. He was not granted permission [to have his car in the garage].

Re the access into house, there's no way you can get access into the house without a key to the garage [entry]. There was a key on the counter, but that was prior to my text message from Rob. He said he gave it to [the Tenant], not that it was left anywhere. But once again the whole issue is the fact that the doors are unlocked or not, they never were when I was at the house. Somehow those doors were being unlocked. If you can get into the main part of the house, there's still the issue of the missing key from the entry to the main part of the house. The issue here was that Adam was using the house as a way to get from the garage to the [rental unit]. He was not granted permission to enter.

Basically, he denied it, and accused [M.H.] of entering his suite without notice. [M.H.] didn't enter the suite; he had his foot at the door to discuss why the door was unlocked, but [the Tenant] forced it closed and locked it on his side.

There was access being made and the thermostat was being adjusted. It had been set at 70 – 72 to maintain comfort. It was at 77 degrees, which we had not set it at. [M.H.] had bought a small electric fireplace to help augment the heat downstairs. What's at issue, here is somehow they've gained access and tried to deny it, and later admitted it, so that was why we felt notice to end tenancy was warranted. Trust was broken, despite the good will gesture of letting them use the garage.

M.H. said that he concurs with what [A.H.] said.

It comes down to [the Tenant] initially accessing upstairs without permission. We're not sure how he got access, but the fact is that he had access and used it. He admitted it later. Incidents prove that as well. In terms of how we come to that conclusion, see [A.H.'s] and my statements – detailed descriptions of each event.

Later we realized what was going on with the property. The [One Month Notice] form was completed with the advice of RTB.

In response to the Landlords' comments, the Tenant denied having had any access to the upstairs suite, since it was vacant. He said:

I came home early [on November 1] and heard noises in my suite. No one was home, but someone was up the stairs leaving my suite. I saw the door to the upstairs was open a bit. [M.H.] came running downstairs and entered my suite, I tried to close the door - this is against our agreement; you have to give me notice. It's not the first time I had noticed the door open from that side.

I'm half-naked in a towel at this point. After the shower, I went around to the upstairs. They said, 'this is illegal . . . we want the garage back now, because we gave you X amount of days for the garage sale.' I admit that I went about 2 – 3 weeks beyond. I screamed at the Landlord – that's why they gave me the eviction notice. I pleaded and begged for access to the garage. We were all on good terms before.

They told me I could use one half of the driveway. I let the other tenant use it. That was a problem for them. They would pull up behind my car and check the mail. I feel they feel I have been taking over part of the driveway and that I'm taking up too much of the house. I've done everything I can to make them happy. Any concerns, I immediately address it. In the rain – I raked and cleaned and mowed the lawn when asked. I feel if they felt I was having access. . . they should have given written notice or warning. It affected our enjoyment of the home. Our daughter is stressed out about where she's going to school next month. I had hoped that they would have given me a warning, rather than a straight eviction. I didn't access the upstairs.

The Tenant noted that in the One Month Notice, the Landlords checked off a ground that states he did some illegal activity. "I don't know what they are talking about," he said.

We had a garage door opener, I had no need to go through the house. And as [A.H.] said, [M.H.] bought us the fireplace; we don't need to fiddle around with the thermostat. That doesn't apply to the situation, because we have the fireplace downstairs. Never did I tell them that I went upstairs.

A.H. said that [M.H.] did not enter the rental unit suite on November 1, as the Tenant

claims. He said that the door does not have a knob and that [M.H.] knocked loudly and took a picture of the partially opened door.

As for his claim that we've entered his suite before that's totally unfounded. I know better. I always contacted [the Tenant] if I needed access to the suite. He's always allowed access. No one has ever had any reason to enter his suite for any reason. He did admit to going through the house that day and we had our discussion. He had admitted to both of us that he had been going through the house. Once again – we made sure the garage door was locked. There must be a key somewhere.

The illegal activity was the simple fact that he was trespassing in the house on his own admission. [M.H.] and I both heard him say that he had been going through the house. I brought an abrupt end to that. I don't know how he figures that we're that stupid to think there's not a key out there somewhere.

Re the driveway. Yes, we said you can use it, but pull over onto the gravel part of the driveway, so you can fit a car into the garage. But he continually parks in the middle of the driveway. It goes against our verbal agreement on the use of the driveway. Pull over to the side, so the other tenant or anybody visiting had the side-by-side parking in the driveway, but you don't want to follow those sets of rules.

I asked him to cut the lawn for his own benefit for his month-long garage sale. He did do it, but he hasn't been asked to do that, otherwise.

The Tenant responded to the Landlords' suggestion that he had been in the other suite to change the thermostat. He said that the Landlords have been doing showings, and maybe someone they were showing changed the thermostat.

The Tenant admitted that there was a verbal agreement about the driveway, that he would pull over, so that the other tenant could use the other half. However, the Tenant said that when the other tenant left, he pulled into middle of the driveway. He said: "No one mentioned it as a big concern. I tried to be the best tenant and address issues immediately, so I wasn't aware that it was a big issue."

The Tenant had previously said that the Landlords would pull in behind his car, partially parking on the street and across the sidewalk. When I asked about this he said:

There's parking on the street around the house, but I believe it was an anger thing, pulling up behind my car. I assumed they were having an issue with where I was parking, but no one mentioned it to me, so I didn't adjust my parking. There are many, many spots on the street. It was just an anger thing that I wasn't entitled to park on the driveway.

The Landlord A.H. said that he did park across the back of the driveway, because he was meeting tenants to show them suite. I wanted them to know I was there.

He was good about moving the car over when his wife was using the garage, so he knows. I once asked him to please go back to moving over, and he came out to move his vehicle, so I was already settled in my pattern for showing the house. I addressed it via text. I wasn't trying to be nasty, nothing but congenial. [The Tenant] and I have stood by that vehicle when he was parked to the side. But ever since we took the garage privilege away, he wants to use the entire driveway the way he wants. Maybe he doesn't feel the rules apply because the upstairs is vacant

Re the thermostat – nobody had any reason to play with it. I turn it down when I leave, if I turn it up. I've actually had an email (not part of the package) from him about it. He had asked to have the thermostat set at a certain temperature, because he doesn't like to wake up to a cold house. He suggested that the fireplace wasn't working great, because he has to get up and turn it on. I find that whatever is stated here is the same I get in writing or talking face-to-face.

This isn't about the monetary aspects. It's about the access that was admitted to and the trespassing. I think it's gone beyond reasonableness on their part.

The Landlord, M.H., said that his encounters with the Tenant are often confrontational, such as on November 1st when they realized that he was using the upstairs suite. M.H. also said that in the second week of August, when the other tenant moved out, the two Landlords were there talking about the keys and access to the garage. He said the Tenant's "...attitude toward the discussion was confrontational, if not threatening. He raised his voice, which is not good behaviour by any standard."

M.H. spoke of the issue with the temperature having been changed. He pointed to a text message the Landlords submitted dated October 14. In his text, the Landlord advised the Tenant that he was at the residential property to install a programmable thermostat. The Tenant's response included the following:

I think we need the thermostat at 20° constantly in order to keep it warm downstairs here

I found if you take it off 20° it gets really cold fast down here and if you turn it up any higher it's too hot so just leave it exactly where it was at when you came in this morning.

Somebody is almost always at home so we need the thermostat on. . .

M.H. said:

He was the one who brought up the temperature. He knows what the temperature was set at. Their claim [about not touching the thermostat] was nonsense.

We had a lengthy text message that he didn't share, as well. He didn't say he had access. The logical conclusion is that he knows the temperature setting, and he must have access to know that. Our reasons for One Month Notice are because he illegally accessed the upstairs, and his passing through the upstairs is a violation of our rights.

The reason comes back to the point of the One Month Notice – he was told not to access [the upstairs suite] and they did. When challenged in the past, they said no access. But on that day, he admitted it. At one point he asked how do I move things? [A.H.] said open the garage door and go through the side of the house.

We changed the locks on December 30, through front door and through the garage.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The Tenant presented evidence in the hearing that I find to be internally inconsistent. At one point he spoke of the Landlords pulling in behind his vehicle in the driveway, rather than having parked on the street. He suggested that he had to speculate as to their motives, as they did not tell him that he was taking up too much space in the driveway.

However, he also said they told him he could use one half of the driveway, not the entire space by parking in the middle. Later in the hearing, he said, “no one mentioned it as a big concern. I tried to be the best tenant and address issues immediately, so I wasn’t aware that it was a big issue. There’s parking on the street around the house, but I believe it was an anger thing, pulling up behind my car. . . I assumed they were having an issue with where I was parking , but no one mentioned it to me, so I didn’t adjust my parking. Many, many spots on the street. Just an anger thing that I wasn’t entitled to park on the driveway.”

I find the Tenant’s attitude in this regard to be disingenuous in that he was obviously aware that his behaviour of parking in the middle of the driveway was irritating to the Landlords and therefore, unauthorized; however, he said that no one verbalized this as a problem. This is inconsistent with his statement that he was told he could park on one side of the driveway, which is consistent with A.H.’s evidence that he was told he could park on the gravel side of the driveway, so that other tenants, the Landlords or visitors could park on the driveway or use the garage at the same time.

This raises questions in my mind about the reliability of the Tenant’s other statements in the hearing, such as his denial that on November 1, 2019 he admitted to having gone through the upstairs suite to move items from the garage.

I find that it is more likely than not that the Tenant was deceptive with the Landlords during the tenancy and with his evidence in the hearing. Based on the Tenant’s own text to the Landlords’ as noted above, I find that the Tenant’s knowledge of the thermostat setting suggests that he had been in the upstairs suite without the Landlords’ permission. This is compounded by the Landlords’ discovery on November 1, 2019, of the temperature being higher than they would have left it, and the doors between the units being unlocked on both sides, and the garage door to the other suite being found unlocked. Overall, I believe the Landlords’ version of events over that of the Tenant.

I find that the Tenant used the garage without permission, entered the other suite without permission, parked in the middle of the driveway without permission, and repeatedly denied having had a key to the rental unit, despite that being the only reasonable way he could have entered the other suite. I find the Tenant’s behaviour indicates that the Landlords cannot trust him with the residential property. As a result, I find that the Tenant significantly interfered with or unreasonably disturbed the Landlords, pursuant to section 47 of the Act.

When I consider all the evidence before me overall, I find that the Landlords have

provided sufficient evidence to meet their burden of proof on a balance of probabilities, to support the validity of the One Month Notice. I also find that the One Month Notice issued by the Landlords complies with section 52 of the Act as to form and content.

I, therefore, dismiss the Tenant's Application to cancel the One Month Notice; rather, I confirm the One Month Notice, and pursuant to section 55 of the Act, I find the Landlords are entitled to an Order of Possession. As the effective vacancy date of the One Month Notice has passed, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant.

Given that the Tenant was unsuccessful in his Application to cancel the One Month Notice, I decline to award him recovery of the \$100.00 Application filing fee.

Conclusion

The Tenants are unsuccessful in their Application to cancel the One Month Notice. I found that the Tenants significantly interfered with and unreasonably disturbed the Landlords.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 08, 2020

Residential Tenancy Branch