Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **AAT, FFT, OLC, RP, LAT, LRE, PSF, CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order to allow access to the tenant or their guests pursuant to section 30;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order for regular repairs to be done to the rental unit pursuant to section 32.
- An order to change the locks to the rental unit pursuant to section 31;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62; and
- An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

The named landlord NS did not attend the hearing, however CS her attorney appointed pursuant to the Power of Attorney *Act* was present with her counsel, JC. For ease of reference, CS the attorney appointed pursuant to the Power of Attorney *Act* will be referred to as landlord throughout this decision. In places where the actual landlord/owner of the property is referenced, her initials, NS will be used.

The tenant KS also attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord's counsel confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

Rules 6.1, 6.2 and 2.3 pertain to the hearing of a dispute resolution proceeding, reproduced below.

6.1 Arbitrator's role
The arbitrator will conduct the dispute resolution process in accordance with the *Act*, the Rules of Procedure and principles of fairness.

6.2 What will be considered at a dispute resolution hearing
The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.
The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

2.3 Related issues
Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I determined the tenant's application to cancel the landlord's 1 month notice for cause was not substantially related to the remainder of his application. I dismissed the remainder of the tenant's application with leave to reapply.

Issue(s) to be Decided
Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The landlord NS in this proceeding is the tenant's mother. CS, the person named on the power of attorney document is the tenant's sister. The tenant was living in the same home as NS, her mother, before moving out of the home and into the rental unit that is the subject to the dispute.

A copy of the tenancy agreement was provided as evidence. The fixed, ten year tenancy began on April 19, 2019 set to end on May 31, 2029. Rent was set at $100.00 per month, payable on the first day of the month. The landlord's counsel points to the following term of the tenancy agreement:

> *clause 12(3):*
> *the tenant must not change locks or other means of access to the common areas of residential property, unless the landlord consents to the change, or his or her rental unit, unless the landlord consents in writing to, or an arbitrator has ordered the change.*
> *And to addendum 1 a):*
> *No alterations are accepted to the premises, yard or gardens without the landlords express written consent (buildings, painting, installations, locks etc.)*

The landlord's counsel provided the following information. The rental unit was once occupied by a previous tenant. That tenancy ended on March 16, 2019 and the landlord rekeyed the locks to the rental unit on April 1, 2019. An email from the locksmith was provided as evidence.

In late October 2019, there was a water leak from a water tank in the rental unit. On November 11, 2019, the landlord provided a notice to enter the rental unit on November 14, 2019 at 10:00 a.m., seeking to conduct an inspection to inspect the water damage caused by the water tank. Together with this notice, the landlord provided the tenant with a letter advising that CS is the landlord/owner's agent and has her authority to conduct the inspection with the property restoration company. It also states the tenant has no authority to instruct any party to make changes or repair the property. Copies of the notice and letter were provided as evidence. The landlord also provided a photo of the Notice posted to the door of the rental unit at 15:51 on November 11, 2019 as proof of service. The landlord also provided a letter from the tenant dated November 12, 2019 acknowledging receipt of the landlord's notice to enter.

When the landlord CS attended the rental unit on November 14, she discovered the key wouldn't work. The lock had been changed by the tenant. Further, on this date the tenant wouldn't allow CS into the rental unit to conduct the inspection. The property

restoration company representative was allowed into the unit but was denied access to the full apartment and was unable to conduct a full assessment of the damages.

On December 4, 2019, another notice to enter the rental unit on December 11, 2019 at 10:30 a.m. In this letter, the landlord advises the tenant that the tenant was not given written or verbal permission to change the lock to the rental unit and demands the landlord restore the lock to it's original or provide a key to the landlord or the landlord's agent.

The tenant responded the landlord's notice to enter by sending a letter dated December 6, 2019. In this letter, the tenant advises the date requested is inconvenient and needs to be rescheduled to December 18 or 19 at 10:00 a.m. According to the tenant's letter, *the landlord may enter a tenant's rental unit only when the tenant is at home and agrees to let the landlord inside.*

The second inspection was cancelled due to the tenant's response. Due to this, the landlord's counsel submits that damage from the water leak cannot be fully inspected and this prevents the landlord from completing the insurance claim with the insurer.

The landlord points out that this is the tenant's second application seeking permission to have the locks changed. The first application was dismissed with leave to reapply and the file number is listed on the cover page of this decision. Counsel submits that this is indicative of the tenant's understanding that she requires an order of the director to change the locks or written permission from the landlord. The tenant changed the locks to the rental unit nonetheless.

The landlord served the tenant with a One Month Notice to End Tenancy for Cause by posting it to the tenant's door on December 25, 2019. The tenant acknowledges receiving it on December 27, 2019. The reason for ending the tenancy stated on the Notice is as follows:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

A schedule outlining the reasons for ending the tenancy was provided. Counsel for the landlord notes the following parts to the schedule:

4… The landlord's agent discovered that the lock to the apartment had been changed.
5. On December 4, 2019, [landlord] provided written notice to the tenant that she did not have permission to change the lock and that she was required to restore the original lock or provide a key to the landlords.
8. The tenant has not restored the original lock nor provided the landlord with a key to the new lock.
9. The landlords have expressly not allowed the tenant to change the lock.

The tenant provided the following testimony.
The notice to enter the rental unit dated November 11 wasn't disputed. What she did dispute was the ability to respond to the landlord as only a 'strange' email address was provided. This was the only means to communicate with the landlord to let them know she would be there.

When the restoration repairman came, he was not denied access. He left within 30 seconds of being invited in. He was encouraged to look around. No one else was presented as being an agent of the landlord or said they wished to enter the apartment. Nothing was provided to her indicating the agency agreement between her sister and the landlord, her mother. Emergency repairs were done to the water tank the day of the flood and the tenant has not been reimbursed by the landlord for the repairs.

Regarding the changing of the locks: the tenant states that when she was occupying the landlord's house, her possessions were ransacked by family members. That is why the landlord wanted her to live in the separate apartment, the subject of this dispute. The tenant acknowledges she changed the locks to the rental unit but she did so because of family dynamics including threatening and harassment from her father. This caused her landlord, her mother to verbally give her permission to change the locks to the rental unit. During the hearing, I was referred to an affidavit of a friend of the tenant who indicates at paragraph 8 that states the landlord sought assistance to change the tenant's locks to prevent access to the rental unit from the tenant's family.

The tenant states that the only time she received any letter was after the 14th of November. She denies receiving any of the notices to enter the rental unit and denies knowing about the agency relationship between her sister and her mother. She had no means to change the locks back or to advise the landlord's agent of any intent to do so. She has no way to access the actual landlord, her mother but she would have been fine giving her the key. The mother/landlord's cell phone has been disconnected and she is living in an assisted living facility.

Analysis

The tenant acknowledges being served with the One Month Notice To End Tenancy for Cause on December 27, 2019. She filed to dispute the Notice on January 2, 2020. I find the tenant disputed the Notice within 10 days, as required by section 47 of the *Act*.

If the tenant disputes the Notice, pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice. In the matter at hand, the landlord must demonstrate that any of the following has occurred:

- The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- The tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Turning first to the tenant's application. In it, the tenant states that the Notice was improperly served and is unsubstantiated by fact. During the hearing, the tenant acknowledged service of the Notice and I found the tenant disputed it on time. Is the Notice substantiated by fact? Based on the evidence before me, I conclude that it is.

The landlord has shown evidence, corroborated by the tenancy agreement and the addendum that shows the parties agreed that the tenant is bound by section 31(3) of the *Act* which states*:*

A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

The tenant has not provided sufficient evidence to satisfy me that she had agreement in writing to change the locks or any order from the director. I am cognizant of the fact that the tenant once sought permission to change the locks to the rental unit and this issue was dismissed with leave to reapply at a previous hearing. Nonetheless, the evidence shows the tenant went ahead and changed them anyways. The evidence and testimony of the parties also supports the landlord's assertion that the tenant didn't change the locks back or give the landlord a key after being given written notice to do so.

During the hearing, the tenant argued that she did not receive any of the notices to enter. Based on the fact that she sent correspondences to the landlord immediately after receiving the notices that make reference to the notices, I find this version of events does not match the documentary evidence provided.

Based on the evidence provided, I find that the tenant changed the locks to the rental unit some time prior to November 14th. On December 4, 2019, I find the landlord served the tenant with written demand to comply with the tenancy agreement, the addendum and section 31 of the *Act* to either change the locks back or provide the landlord with a key. I am satisfied the tenant did not do either action after a reasonable time to do so was given.

Regarding the tenant's argument that she couldn't contact her mother, the actual landlord in the tenancy agreement, I find this argument holds little weight. Counsel for the landlord has produced multiple letters received from the tenant which appears to me to indicate there was no difficulty in corresponding with the landlord, her agent or counsel.

I find that by changing the locks without written permission from the landlord or an order of the director, and by not changing the locks back or providing a key to the landlord, the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. For this reason, I uphold the landlord's One Month Notice to End Tenancy for Cause.

Section 55 of the *Act* states:
If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having examined the Notice, I find that it complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must be in writing and (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section

45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Pursuant to section 55 of the *Act* I dismiss the tenant's application and grant the landlord an Order of Possession. As the effective date stated on the Notice has passed, I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises 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: March 03, 2020

Residential Tenancy Branch