



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, RP, LAT, LRE**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to authorize the tenant to change the lock pursuant to section 31 and 70.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 46 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant testified the tenant personally served the landlord with the Notice of Hearing and Application for Dispute Resolution on August 18, 2020. The tenant stated the landlord had previously issued a One Month Notice, the landlord had not attended at the tenant’s application to cancel the Notice, and the previous Notice was dismissed. The

tenant was not able to provide the file number.

Further to the testimony provided by the tenant, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on August 18, 2020 pursuant to section 89 of the *Act*.

Preliminary Issue – One Month Notice

I explained to the tenant 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's One Month Notice dated August 12, 2020 within the ten day period after service, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to authorize the tenant to change the lock pursuant to section 31 and 70.

Background and Evidence

The tenant provided uncontradicted evidence in a 46-minute hearing as the landlord did not attend.

The tenant testified the tenancy began on August 15, 2018. Monthly rent is \$750.00, and the tenant provided a security deposit of \$375.00. A copy of the agreement was not included in the evidence package. The tenant explained the unit is a basement apartment in a building which holds several apartments.

The tenant reported a history of harassment by the landlord, neglect of her needs for essential repairs, and unauthorised entry of the unit by the landlord and others. The tenant stated she reported this to the police and the complaints are “under investigation”. The tenant alleged the landlord and other occupants of the building “are against her”. The tenant stated she had no one to assist her with the tenancy issues she described.

The tenant requested an Order preventing the landlord from entering the unit and that the landlord be required to comply with the notice provisions of the Act.

The tenant requested repairs as follows:

1. Repair of leak of the shower causing water damage and mold;
2. Removal of mold;
3. Repair of front door lock.

With respect to the repairs, the tenant provided verbal testimony; the damaged door lock was also supported by pictures.

The tenant stated she had informed the landlord of the shower leak “six or 7 months ago” and that the landlord tried unsuccessfully once to fix the problem. The tenant stated she has repeatedly asked the landlord to fix the ongoing leak and the resulting mold, but the landlord has refused or failed to do so.

The tenant claimed the landlord and others entered her unit without her permission when she was not there. The tenant suspects the landlord of copying her key, entering the unit, and disturbing/stealing her possessions. The tenant stated she had a security system which took pictures of the landlord entering the unit without permission and

being inside the unit itself.

The tenant alleged that the landlord was somehow responsible for the broken lock from an alleged break-in. The tenant requested that the landlord repair the lock.

The tenant submitted medical information attesting to her good health. She did not submit copies of the images from the security system or any evidence to support her testimony about the landlord's responsibility for the broken lock and unauthorized entry.

Analysis

During the hearing, I observed the tenant to be sincere and earnest. The tenant genuinely sought help for her claims which she earnestly believed are the landlord's responsibility.

The tenant's claims are discussed in turn.

An order to restrict or suspend the landlord's right of entry pursuant to section 70:

The landlord must always follow the proper process for lawful entry into a tenant's home.

The Act states as follows:

Landlord's right to enter rental unit restricted

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).

I realize the tenant is sincere in her suspicions that the landlord and others have been entering her unit without permission. However, I find that the tenant has not met the burden of proof on a balance of probabilities. In other words, I find the tenant has not established that it is more likely than not that the landlord has been entering her unit without authorization.

If a tenant thinks the landlord has entered illegally, they should ask them in writing to follow the required process for legal entry. A tenant can also apply for dispute resolution asking for monetary compensation, restrictions on the right to enter, or an order that allows the tenant to change the locks and keep the only keys – returning them to the landlord upon moving out. I urged the tenant to seek the services of the RTB and an advocate.

I find the tenant has not met the burden of proof on a balance of probabilities under both these sections. I dismiss these claims without leave to reapply.

However, I remind the landlord of the duty to comply with the provisions of the Act respecting entry to the unit.

An order requiring the landlord to carry out repairs pursuant to section 32 – shower leak and resultant mold

Section 32 of the Act sets out the landlord's duty to repair and maintain, stating as follows:

Landlord and tenant obligations to repair and maintain

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the tenant's evidence that the leak has been ongoing for 6-7 months and the landlord attempted once to repair the leak without success by putting "blocks" around the shower. I find the tenant has met the burden of proof in this regard.

The tenant asserts there is harmful mold in the unit from the leak but has provided no documentary evidence in support of her claim. Nevertheless, as I accepted the tenant's testimony that there has been a leak in the shower for many months, I find it is probable the tenant's assertion there is mold is credible. I find the tenant has met the burden of proof in this regard that a black substance is present in the tenant's bathroom which caused her concern.

Accordingly, I direct that within 14 days of the date of this Decision, the landlord retain a qualified person to examine the alleged leak and the alleged presence of mold, determine whether a leak or mold is present, determine an appropriate repair for both, carry out the repairs in a timely manner, and provide a letter to the tenant outlining the issues and the solution.

An order requiring the landlord to carry out repairs pursuant to section 32 – front door lock

Section 31 of the Act states (underling added):

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) 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.

RTB Policy Guideline #1. Landlord & Tenant – Responsibility for Residential Premises states the landlord's obligation as follows:

The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

The tenant stated that the damage to the front door lock occurred as a result of a break-in “about a year ago” which has left her unit insecure.

I find the tenant has not met the burden of proof that the landlord broke in to the unit or is otherwise responsible for the damage.

However, it is clear from the photos that the lock and door are damaged, and it is reasonable the tenant would feel insecure. I direct that the tenant may replace the lock at her own expense; the tenant shall provide a copy of the key to the landlord.

Summary

The One Month Notice is dismissed, and the tenancy shall continue until ended in accordance with the agreement and the Act. The application under section 70 is dismissed without leave to reapply.

I direct that within 14 days of the date of this Decision, the landlord at her own expense retain a qualified person to examine the alleged leak and the alleged presence of mold, determine whether a leak or mold is present, determine an appropriate repair for both, carry out the repairs in a timely manner, and provide a letter to the parties outlining the issues and the solution.

I direct that the tenant may replace the lock at her own expense; the tenant shall provide a copy of the key to the landlord.

Public Trustee

I find I am unable to assess serious issues affecting the tenant and her claims regarding the tenancy. I direct that the RTB provide a copy of this Decision to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia V6C 3L3

Ph: 604.660.4444
Fax: 604.660.0374

Conclusion

The One Month Notice is dismissed, and the tenancy shall continue until ended in accordance with the agreement and the Act. The application under section 70 is dismissed without leave to reapply.

I direct that within 14 days of the date of this Decision, the landlord at her own expense retain a qualified person to examine the alleged leak and the alleged presence of mold, determine whether a leak or mold is present, determine an appropriate repair for both, carry out the repairs in a timely manner, and provide a letter to the parties outlining the issues and the solution.

I direct that the tenant may replace the lock at her own expense; the tenant shall provide a copy of the key to the landlord.

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: October 05, 2020

Residential Tenancy Branch