



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, AAT, OLC, LRE, FFT

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- disputing a rent increase;
- an order that the landlord allow access to the rental unit for the tenant or the tenant's guests;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, accompanied by a support person, who observed only and did not take part in the hearing. The tenant gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and despite providing evidentiary material, no one for the landlord joined the call.

The tenant testified that the landlord was served with the Application for Dispute Resolution, notice of this hearing and evidentiary material on September 26, 2020 by registered mail. The tenant has provided a Canada Post cash register receipt bearing that date, as well as a Registered Domestic Customer Receipt stamped by Canada Post with that date, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenant has been reviewed and is considered in this Decision. However, since the landlord has not attended, I decline to consider any evidence provided by the landlord.

Issues to be Decided

- Has the tenant established that a notice to end the tenancy given by the landlord should be cancelled?
- Has the tenant established that rent has been increased contrary to the law?
- Has the tenant established that the landlord should be ordered to allow entry for the tenant or the tenant's guests?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically with respect to entering the rental unit, and removing the tenant's home security camera?
- Has the tenant established that the landlord's right to enter the rental unit should be limited or allowed conditionally?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level of the home is also tenanted; the landlord does not reside on the property.

The tenant further testified that a written agreement exists, but not on a form, but a document typed up by the landlord. A copy has not been provided for this hearing, however, the tenant testified that it names the parties, the address of the rental unit and shows the amount of rent payable on the 1st day of the month and contains the landlord's banking information for paying rent. It also indicates half a month's rent for a security deposit and what is included in the rent. It also specifies that the front lower bedroom is included with a private bathroom.

Prior to signing the tenancy agreement, the landlord said that the tenant could rent a room for \$500.00 per month, but the tenant told the landlord he wasn't interested in a single room. The landlord then called the tenant and offered the entire suite for \$750.00 per month and the tenant agreed. The tenant gave notice to end his previous tenancy, and when the tenant arrived at this rental unit, the landlord said he was only renting the front

bedroom and the other bedroom would be used for storage for use by the tenant and the landlord. The tenant didn't feel he had any choice due to giving notice to end his previous tenancy and COVID-19. The tenancy agreement specified the lower front bedroom, but it says nothing about the second bedroom. The tenant seeks an order that the rental unit includes both bedrooms as promised at the beginning. The rental unit contains a kitchen, entry, bathroom and 2 bedrooms, but no living room. Each of the 2 bedrooms has its own outside entry, and the second bedroom has a door to the rental unit and a lock from the other side.

The tenant has also provided emails and text messages exchanged between the parties, wherein the landlord indicated that to use the second bedroom, rent would be increased to \$1,000.00. The tenant seeks an order that rent cannot be increased for use of that room.

The text messages also includes one from the landlord stating that the tenant can only have guests on weekends and a fee of \$20.00 per night will be charged for overnight guests. The tenant seeks an order that the landlord allow access to the rental unit for the tenant and the tenant's guests without an overnight fee.

The landlord also enters the rental unit without prior notice. The tenant got a security camera and has 3 videos of the landlord entering without the tenant's knowledge, without notice, and also brought someone else in. The landlord threatened to take away the tenant's home security camera. The landlord has previously given 2 hours notice to enter, but not for an emergency, just what worked for the landlord. Although the tenant's application does not seek an order permitting the tenant to change the locks to the rental unit, the tenant testified that he would like to do so.

The landlord has also been to the police station twice, slandering the tenant, in an effort to get police involved. The tenant feels harassed, doesn't feel comfortable in his home, and is not sleeping. The tenant does not want the landlord entering the rental unit at his will. The landlord told the tenant to call the police, which he did, and the police said they wouldn't be doing anything until after this hearing is concluded.

The tenant seeks orders limiting or setting conditions on the landlord's right to enter the rental unit and an order that the landlord comply with the *Act* by not entering the rental unit without giving the tenant proper notice.

Analysis

Firstly, I do not have the benefit of seeing the tenancy agreement. The tenant testified that the parties had agreed to the entire rental unit for rent in the amount of \$750.00 and when the tenant arrived the landlord changed his mind and told the tenant that only one of the

bedrooms is included. The tenant had already given notice to end his previous tenancy, and due to that and COVID-19, the tenant felt he had no choice but to sign the contract, and he did. I cannot change the terms of a tenancy agreement that has been entered into by the landlord and the tenant unless it's contrary to the law. However, given the tenant's undisputed testimony that the second bedroom has an outside door, a doorway to the rental unit and a lock from the other side, I find it prudent to order that the tenant be permitted to put a lock on that door from the tenant's side to prevent entry by the landlord or other persons.

I also consider the undisputed testimony of the tenant that the landlord said that the second bedroom would be used for storage for the landlord and for the tenant. Therefore, I order that the tenant be permitted to use the second bedroom for storage.

The *Residential Tenancy Act* specifies how a tenancy ends, and a landlord may not end a tenancy except in accordance with the law. A landlord may only end a tenancy using the approved form and the reasons must be justified. In this case, the landlord has not done so, and the tenancy continues.

The landlord may not increase rent except in accordance with the *Act* and the regulations, and therefore I find that the landlord's message about increasing rent is not lawful.

A landlord may not prevent a tenant from having guests and may not charge a fee of any kind for overnight guests. The rental unit is the tenant's home, not the landlord's motel, and I order the landlord to avoid collecting any overnight fees. I further I order the landlord to allow access to the tenant and the tenant's guests without a fee.

A landlord must not enter a rental unit without giving the tenant notice in writing at least 24 hours before the entry. The law also states that such a notice is deemed served if posted to the door of the rental unit 3 days after posting it, and another 24 hours beyond the date of deemed service is required. Further, the notice must include the date and time of entry and the purpose for entering. Specifically, the *Act* states:

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 order the landlord to comply with Section 29 above.

With respect to the tenant's home security camera, if the landlord confiscates it as the tenant has testified that the landlord has threatened to, that may constitute an offence under the Criminal Code. I have no authority in that regard, however I also find it necessary to order, and I order the landlord to comply with Section 28 of the *Act*, which states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it as a judgment in the Provincial Court of British Columbia, Small Claims Division for enforcement.

Conclusion

For the reasons set out above, I hereby order that the tenant be permitted to put a lock on the second bedroom door so as to prevent the landlord or other persons from entering the rental unit through that bedroom door.

I further order that the tenant be permitted to use the second bedroom for storage.

The notice to end the tenancy given by the landlord in a message is cancelled, and the tenancy continues.

I order the landlord to comply with the *Act* and the regulations with respect to any rent increase.

I hereby order the landlord to allow access to the rental unit for the tenant and the tenant's guests without charging any fee.

I hereby order the landlord to comply with the *Residential Tenancy Act* by refraining from entering the rental unit except in accordance with Section 29 as set out above.

I hereby order the landlord to comply with the *Residential Tenancy Act* by providing the tenant with quiet enjoyment of the rental unit, free from unreasonable disturbance and exclusive possession of the rental unit, in accordance with Section 28 as set out above.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: November 12, 2020

Residential Tenancy Branch