



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, OLC, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on October 4, 2020 wherein the Tenant sought the following relief:

- an Order restricting the Landlords' right to enter the rental unit;
- an Order permitting the Tenant to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement;
- monetary compensation from the Landlords; and,
- recovery of the filing fee

The hearing was conducted by teleconference at 11:00 a.m. on December 11, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant named her six-year-old son as a tenant on her Application. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* (the "*Act*") I amend the Tenant's Application to remove her son as Tenant as he is an *occupant* of the rental unit.

The Tenant vacated the rental unit on October 31, 2020, as such her request for the following relief was no longer applicable:

- an Order restricting the Landlords' right to enter the rental unit;
- an Order permitting the Tenant to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement;

I therefore dismiss the above claims without leave to reapply.

The hearing of the Tenant's Application concluded on December 11, 2020. This Decision was rendered on January 15, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that her tenancy began October 7, 2015. She gave notice to end her tenancy on September 22, 2020 and vacated the rental unit on October 31, 2020.

The Tenant confirmed that at the time the tenancy ended the monthly rent was \$1,182.00. She stated that she paid her October rent by post date cheque on September 22, 2020.

The Tenant claimed that she was not able to live in the rental unit during the month of October 2020 due to the health risks posed by the Landlords' repeated entry of the rental unit. In the claim before me she sought return of all rent paid for October 2020 in the amount of \$1,182.00.

The Tenant stated that the last night she stayed at the rental unit was on October 4, 2020 following which she stayed with her parents. She claimed that on October 5, 2020 she left for work and did not stay there again although she left the majority of her personal possessions.

The Tenant testified that she was concerned for the health and safety of her family and felt threatened by the Landlord. She also claimed that she felt harassed by the Landlords repeatedly entering the rental unit, including on the following dates: August 23, September 16, September 27, October 4, October 8 and October 23.

The Tenant claimed that she has underlying health issues which make her more susceptible to illness. She further stated that due these issues she is very worried about possible exposure to COVID-19. The Tenant confirmed that she informed the Landlords about her health issues on October 8, 2020.

The Tenant initially testified that the Landlords refused to wear gloves when they entered the rental unit. She then clarified that she did not recall if they wore gloves on August 23 or September 16 and confirmed that she was not present during the September 27 entry. The Tenant stated the Landlords did not wear gloves on October 4, 2020. The Tenant also claimed that the Landlord failed to follow *any* COVID-19 cleaning protocols. The Tenant confirmed that as her tenancy had not ended and she was concerned about the Landlords removing her items, she attended the rental unit on October 8, 2020. She also brought her mother, K.B., as a witness. She claimed her mother also has underlying issues, such as asthma and chronic lung issues. The Tenant stated that she felt concerned about her personal possessions and the Landlord's false allegations such that she brought her mother. The Tenant stated that she looked into installing a camera/security system but felt she had no other options but to be present when the Landlords attended her unit. The Tenant stated that on October 8, 2020 the Landlord had gloves, but they did not wear them consistently. Both parties provided video evidence in support of their positions.

In response to the Tenant's claims, the Landlord, S.L. testified as follows. She confirmed that on October 8, 2020 the Tenant informed the Landlords that she had health issues.

S.L. testified that they were aware of, and followed, all COVID-19 protocols. She confirmed she entered the rental unit on September 27, 2020, October 8, 2020 and October 23, 2020. She stated that on September 27, 2020 she showed the rental unit to prospective tenants and everyone in attendance wore gloves and a mask. She also

claimed no one touched any surfaces. S.L. testified that on October 8, 2020 she and R.L. attended the rental unit to inspect rental unit. She noted that she and a worker entered on October 8, 2020 and R.L. remained outside. S.L. stated that they were hoping to begin the bathroom repairs on that date, but as the Tenant had not cleaned the bathroom there were not able. She also stated that she and the worker had gloves and mask on. She testified that they began the bathroom repairs on October 23, 2020. She confirmed that she and R.L. attended the rental unit on that date and they both wore gloves and a mask.. She also stated that everything they brought in was in one bin such that their items did not touch any of the rental unit surfaces.

R.L. also testified. He confirmed he entered the rental unit on four separate occasions over four months. He stated that he entered the rental unit on August 23, 2020 and September 16, 2020 and stated that he followed all COVID-19 safety protocols, including wearing gloves and a mask as well as sanitizing all surfaces after doing the maintenance. On October 4, 2020 he had to do repairs to the microwave as the handle was broken. He claimed that due to the precise nature of the work, he could not wear gloves and as such use a product called PR88 which is an industrial hand barrier. R.L. stated that he did not enter on October 8, 2020. R.L. confirmed that he entered on October 23, 2020 for the purpose of repairing the mould in the bathtub and re-caulking the bathtub and addressing the drywall damage. Again he stated that he followed COVID-19 safety protocols on October 23, 2020.

R.L. confirmed that the Tenants items were still in the rental unit on October 23, 2020. He also stated that he was made aware the Tenant had health issues after she said she was moving out, although he denied being made aware that the Tenant's mother had health issues.

Analysis

In this section reference will be made to the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation* (the "Regulation"), and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The Tenant seeks monetary compensation equivalent to one months' rent on the basis that she alleges she was unable to reside in the rental unit during the final month of her tenancy in October of 2020. She claims that the Landlords' frequent entries to her rental unit rendered it uninhabitable due to the Covid-19 pandemic.

A landlord's right to enter a rental unit is provided for in section 29 of the *Act* which reads as follows:

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).

The evidence confirms that the Landlords attended the rental unit on three occasions during the final month of this tenancy; the dates of entry and the Landlords' reasons are as follows:

- October 4, 2020: to repair the microwave handle;
- October 8, 2020: to inspect the rental unit; and,
- October 23, 2020: to start repairs to the bathroom.

As noted, pursuant to section 29 of the *Act*, a landlord may conduct monthly inspections of the rental unit. I therefore find the October 8, 2020 entry to be reasonable.

Conversely, I am not satisfied the microwave repairs or the bathroom repairs constituted an emergency. As the Tenant had already given notice to end her tenancy, these repairs could have occurred after her tenancy ended. Further, a tenant is required to leave a rental unit clean and undamaged pursuant to section 37(2)(a) of the *Act*. I find this affords a tenant the opportunity to make repairs before the tenancy ended. Should the unit remain unclean or damaged when the tenancy ends, a landlord is at liberty to apply for monetary compensation for related costs. While a landlord may wish to enter the rental unit prior to the end of the tenancy to start repairs in preparation for a new tenancy, I find this to be unreasonable pursuant to section 29 of the *Act*, and a breach of tenant's right to quiet enjoyment pursuant to section 28 of the *Act*.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

Protection of tenant's right to quiet enjoyment

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.

Guidance can also be found in *Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* which provides in part as follows:

“...Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment...”

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it...

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed...

The Tenant testified that due to the Landlords repeated entry to the unit, she did not stay in the rental unit after October 4, 2020 as she decided to stay with her parents. The Landlords testified that they were unaware the Tenant was no longer residing at the rental unit until October 23, 2020.

The Tenant alleges the Landlords did not follow COVID-19 safety protocols and that in doing so exposed her, and her family to infection. The Tenant testified that on October 8, 2020 she informed the Landlords of her health issues which made her more vulnerable to respiratory illnesses such as Covid-19. The evidence confirms the landlords entered the rental unit on October 23, 2020 despite being informed of the Tenant's compromised health.

The Tenant argues that her right to quiet enjoyment was severely impacted by the Landlord's repeated entry to the rental unit, and their failure to follow COVI-19 safety protocols. She argues that their actions rendered the rental unit uninhabitable during the final month of her tenancy such that she should be compensated the full month's rent.

After consideration of the evidence, and the testimony of the parties, I find the Tenant has failed to prove the Landlord breached section 28 of the *Act* to such an extent that the rental unit was rendered uninhabitable for the *entire month* of October 2020.

The Tenant alleged the Landlord and the tradespeople hired by the Landlords did not follow COVID-19 safety protocols when attending the rental unit. After consideration of the testimony of the parties and the video evidence submitted, I am not satisfied the Landlord breached these safety protocols. Rather, I find the Landlords made their best efforts to comply and ensure they reduced any possibility of transmission. Although I

find it more likely than not that they touched surfaces in the rental unit when performing repairs.

The Tenant claimed she has significant health issues which made her particularly vulnerable to COVID-19 infection. She also claimed her family members were similarly vulnerable. It is notable that the Tenant was no longer staying at the rental unit as of October 4, 2020, yet she attended *during* the Landlords' entries thereby choosing to expose herself and her family to potential risk. The Tenant testified that she was worried the Landlords would remove her personal possessions or make false allegations of damage against her. (The Landlords have a pending application before the Branch claiming \$13,485.41 from the Tenant; the file number for that matter is included on the unpublished cover page of this my Decision.) While her decision to attend the rental unit in the face of her claimed health issues is questionable, the fact is the Tenant paid rent for the month of October and was entitled to exclusive possession and quiet enjoyment of the rental unit for the entire month of October

In the Application before me, the Tenant claims return of all her rent for the month of October claiming the rental unit was rendered uninhabitable for the entire month. I find she has failed to prove this on a balance of probabilities. The evidence confirms the Landlord attended the rental unit on three separate occasions in October to inspect the unit and to attend to repairs to the rental unit. Given the that the tenancy was ending at the end of October 2020, I find the Landlords' inspection on October 8, 2020 to be reasonable. However, and as noted, I find the Landlords' entries to perform repairs on October 4 and 23 to be unnecessary and unreasonable.

COVID-19 is a serious worldwide pandemic in its relative infancy. There is no certainty in terms of how long COVID-19 remains on surfaces after contact. The BC Centre for Disease Control provides the following in terms of surface contact:

Surface Contact

Even though COVID-19 can survive for hours or days on different surfaces, infection from contact with contaminated surfaces appears to be less common. The most common type of spread is through larger droplets from close contact with an infected person.

In consideration of the Tenant's health issues, I find that it would be reasonable that she would avoid the rental unit for 1-3 days following entry by the Landlords and their tradespeople. As I have found the October 4 and October 23 to be unreasonable and in violation of her right to quiet enjoyment, I find the Tenant was denied quiet enjoyment of

the rental property from October 4-7 and October 23-26 for a total of six days. The Tenant paid \$1,182.00 for the month of October 2020; as there are 31 days in October, the per diem rate is \$38.13. Accordingly, I award the Tenant the sum of **\$228.78** representing compensation for six days rent in October 2020.

As the Tenant has been partially successful in her claim, I award her recovery of the **\$100.00** filing fee for a total monetary award of **\$328.78**. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$328.78**. this Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant vacated the rental unit on October 31, 2020, as such her request for the following relief is dismissed without leave to reapply:

- an Order restricting the Landlords' right to enter the rental unit;
- an Order permitting the Tenant to change the locks on the rental unit;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement;

The Tenant's monetary claim for breach of quiet enjoyment and recovery of the filing fee is granted in part. She is entitled to a Monetary Order in the amount of **\$328.78** representing return of rent for six days of October 2020.

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: January 15, 2021

Residential Tenancy Branch