



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1025397 BC LTD. MACONDALD COMMERCIAL R.E.S.
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, CNC, LAT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with her submitted documentary evidence via Canada Post Registered Mail on May 18, 2021. Both parties confirmed the landlord served the tenant with their submitted documentary evidence via Canada Post Registered Mail on May 20, 2021. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties are deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the tenant with the assistance of her advocate cancelled the two requests: seeking an order to suspend or set conditions on the landlord's right to enter and

authorization to change the locks. The tenant confirmed these issues were unrelated and that as of the date of this hearing the tenant was unable to provide any further details. On this basis, these portions of the tenant's application are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On February 23, 2021, the landlord served the tenant with the 1 Month Notice dated February 23, 2021 via Canada Post Registered Mail. The 1 Month Notice sets out an effective end of tenancy date of March 31, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.

The details of cause are:

Tenant puts her garbage outside her front door on common property continuously and racoons keep getting into garbage and its attracting all animals and making a mess each time. Tenant changed lock again for a second time without landlord approval. Tenant also propping laundry door open so she can do laundry after hours. Laundry room open from 9am-9pm. Tenant does not tell landlord of necessary repairs until landlord does inspection and by then damage happens to unit.
[reproduced as written]

The landlord stated that the tenant has been using the laundry room afterhours contrary to the listed hours. The landlord stated as a result other occupants of the rental property have filed noise complaints for its usage afterhours. The landlord has referenced several videos dated March 11, March 28, April 5 and April 22 of 2021. The tenant argued that the videos referred to by the landlord were for dates after the notice

to end tenancy dated February 23, 2021. The tenant argued that there is no evidence of any complaints that pre-date the notice to end tenancy.

The landlord stated that the tenant has been leaving her garbage outside of her doorway. The landlord claims that the tenant has been leaving garbage outside continuously even after several warnings that the garbage attracts animals which requires the landlord to retain pest control services and clean up each time an animal gets into the garbage. The tenant has argued that the landlord is relying on evidence previously submitted in a similar dispute resolution hearing on March 30, 2020 and as such must also be excluded from consideration in this hearing. The landlord argued that this documentary evidence was excluded from consideration and not considered in the previous hearing. However, the landlord did make submissions on this same issue regarding the same evidence that was excluded in that previous hearing. In this case, Res Adjudicata applies in that these same issues were presented by the landlord in the previous hearing despite the landlord's documentary evidence being excluded. As such, these matters were already weighted and decided upon in that hearing. The landlord was directed to present any evidence subsequent to that hearing on March 30, 2020 that was relevant. The landlord stated that on January 5, 2021 a photograph was taken of a bag of garbage outside of the tenant's door. The tenant argued the landlord's claim by stating that the garbage bag was placed outside her door, but that it was only for 10-15 minutes before she carried it down to the garbage bin for disposal. The landlord was unable to provide any supporting evidence of how long the garbage bag was left or if it was disposed of by the tenant. The landlord also claims that on January 19, 2021 based upon another photograph of a garbage bag left in front of the tenant's mailbox. The tenant disputed this claim arguing again that the garbage bag was left outside her doorway for approximately 10-15 minutes and then it was removed by her to the garbage bin. The landlord was unable to provide any further details of the garbage bag left outside the rental unit.

The landlord also claims that the tenant changed the lock to the rental unit without the approval of the landlord. The landlord stated that a notice of entry was served to the tenant for January 22, 2021, but the landlord was informed by the tenant on January 21, 2021 that the lock was changed. The landlord stated that the tenant failed to provide a key to the rental unit, but later corrected herself that the tenant had provided a key to the landlord.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case both parties confirmed the landlord issued and served the 1 month notice dated February 23, 2021 to the tenant. The landlord has claimed that the tenant has been accessing and using the laundry room after hours which has caused other occupants to file noise complaints against the tenant. The tenant has disputed this claim arguing that the landlord has failed to provide any evidence in support of their claim of noise complaints prior to the issuance of the notice to end tenancy. The landlord was unable to provide any supporting evidence of any noise complaints prior to the notice to end tenancy being issued. The landlord has also claimed that the tenant has been leaving garbage outside her door. The landlord has referenced dates January 5 and January 19 of 2021 by referring to still photograph of a garbage bag outside the tenant's door. The tenant has argued that on each of these occasions the tenant had only placed the garbage bag outside for a short time of up to 10-15 minutes before taking the bag to the disposal bin. The landlord had also referred to the tenant changing the lock without the approval of the landlord but provided undisputed evidence that a key was later provided to the landlord.

On these issues based upon the evidence referred to by the landlord I find that the landlord has failed to provide sufficient evidence to satisfy me of the noise complaints; the garbage bag(s) left outside; or changing the locks without approval. The landlord failed to provide any supporting evidence regarding the noise complaints and the tenant has provided a reasonable explanation regarding the garbage bags delay in disposing of them. I also find that the landlord has failed to provide any supporting evidence that the tenant has been storing the garbage bag outside beyond the scope provided by the tenant. I find that the landlord has failed to provide sufficient evidence to end the tenancy as the tenant while changing the locks did provide a key later as per the landlord's evidence. As such, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The landlord's notice to end tenancy dated February 23, 2021 is set aside and cancelled. The tenancy shall continue.

Conclusion

The tenant's application to cancel the 1 month notice dated February 23, 2021 is granted.

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: June 08, 2021

Residential Tenancy Branch