



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, LAT, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

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

The landlord and the tenant both attended the hearing and each gave affirmed testimony. The landlord was also accompanied by her spouse, who did not testify or take part in the hearing. The tenant called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

At the commencement of the hearing, the tenant advised that his surname was incorrectly added twice to the tenant's application, and I have amended the Style of Cause to remove the second surname.

The tenant has provided some evidence later than the time required for providing evidence, and the tenant explained that the only late evidence is a police report which was not available within the time required. I accept that, and the landlord has received the late evidence. I find that the late evidence of the tenant is new and relevant evidence that was not available at the time of making the application.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

I also advised the parties that the Rules of Procedure specify that multiple applications contained in a single application must be related. Generally, the primary application is the tenant's application to cancel the notice to end the tenancy, however in this case, I found that all applications are related to the primary application.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord's right to enter the rental unit should be limited or allowed conditionally?
- Has the tenant established that he should be permitted to change the locks to the rental unit?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to the landlord's right to enter the rental unit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 19, 2020 and reverts to a month-to-month tenancy after September 30, 2021, and the tenant still resides in the rental unit. Rent in the amount of \$1,595.00 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 \$797.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a strata apartment in a complex containing 10 floors, and the landlord does not reside in the building. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on May 13, 2021 the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the Notice) by registered mail. A copy of the Notice has been provided as evidence for this hearing and it is dated May 13, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states:

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord received an email from the strata president, a copy of which has been provided stating that the tenant had big party of more than 25 people in the small rental unit and everyone was drunk. A security guard in the building attended, but the tenant wouldn't open the door. Police were called and the tenant still didn't open the door. The landlord has also provided a written statement with a police file number which also states that the tenant banged the door on the landlord's face, hurting the landlord's fingers. A photograph of the landlord's hand has also been provided. The statement also states that a copy of the police report is attached, but it is not attached, Police Case # VA 21-77252 is mentioned.

The landlord sent an email to the strata apologizing. The tenant said he didn't have that many people there, and the landlord asked him to apologize, but he refused. The landlord sent a letter to the manager to apologize on behalf of the tenant. The strata manager sent another email to the landlord on December 4, 2020 stating that the strata has video with more than 6 people. A fine of \$200.00 was levied by the strata and a letter from the strata dated December 17, 2020 has been provided for this hearing. The landlord testified that the tenant has not paid the fine.

The tenant has also been going through the building without wearing a mask. Signs are posted everywhere in the building stating that masks are mandatory in common areas of the building.

The landlord further testified that a few months ago she received a call from a strata manager about the tenant parking in a spot not assigned to him. The strata manager told him not to park there but he continued to do so. The landlord told her to have it towed, but it has not been towed.

The tenant testified that since signing the tenancy agreement, the tenant has been a good tenant; never late with the rent and has a good relationship with neighbours. The tenant cannot move due to a handicap; his knees are very unstable.

The only gathering at the rental unit was a small housewarming party on October 24, 2020 of only 6 people, and the landlord apologized to the strata stating that 20 or 25

people would not fit in the small apartment. All documents of the landlord relate to the same incident, however illegal entry by the landlord is the real reason for this hearing.

The person that the landlord testified is a strata manager is not a strata manager but a friend of the landlord. Further, there is no camera on the tenant's floor so video footage is a lie.

The tenant also testified that he always wears a mask; he has asthma.

The tenant believes the landlord wants the tenant to move out because the tenant does not allow the landlord to enter the rental unit whenever she wants. The last time the landlord attended at the rental unit, no prior notice was given, but the landlord was supposed to show up the following day. The landlord forced her way into the rental unit.

If the gathering in October, 2020 was the reason for eviction, the landlord ought to have given it sooner than May, 2021. The landlord gave the Notice after the tenant filed a police report, and any indication of the landlord about an injury is not mentioned in the police report.

Police didn't show up or knock on the door, and there is no police report about that; the landlord's evidence about a police report uses the tenant's police report as evidence that the police showed up. The tenant filed the police report on May 10, 2021 and the landlord issued the Notice on May 13, 2021.

The landlord comes in and opens drawers and things, and the tenant wants her to leave him alone. The emails from the landlord's friend are fake; she wants the tenant out because the tenant filed the police report.

The tenant had asked the landlord to have a leaky faucet repaired, and the parties agreed that it would be repaired on May 11, 2021, but the landlord showed up with her husband and another person the day prior. They forced entry, and it's an on-going problem. It was not an emergency repair.

The tenant's witness is the tenant's girlfriend and testified that the tenant held a housewarming party of 6 people in October, 2020.

The landlord shows up almost all the time without notice, more than 6 times since the beginning of the tenancy. The tenant refused entry without notice, but the landlord kept pushing the door. Other people were with the landlord. The tenant called police.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause (the Notice), and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

I have reviewed all of the evidentiary material provided by the parties, including the entire police report. I agree with the tenant that the police report mentioned in the landlord's statement is the same police file number which was obviously filed by the tenant on May 10, 2021. The landlord has no doubt provided fraudulent testimony and evidence to support the landlord's claim that police were called by the strata.

In the circumstances, I am not satisfied that the landlord has established that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and I cancel the Notice.

The *Residential Tenancy Act* specifies that a landlord may only enter a rental unit in the following circumstances:

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).

There is absolutely no evidence before me that a leaky kitchen faucet was an emergency repair necessary to protect life or property, and I order the landlord to comply with Section 29.

It is important, particularly in an apartment complex setting that a landlord have keys to enter a rental unit in case of an emergency. I accept the testimony of the tenant that the landlord has on several occasions attempted to enter, however, I do not have any evidence that the landlord has entered using a key, and I dismiss the tenant's application for an order permitting the tenant to change the locks to the rental unit.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. 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, the One Month Notice to End Tenancy for Cause dated May 13, 2021 is hereby cancelled and the tenancy continues.

I further order the landlord to comply with the *Residential Tenancy Act* by only entering the rental unit if the tenant has been given notice as described in Section 29 as set out above.

I further 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.

The tenant's application for an order permitting the tenant to change the locks to the rental unit is hereby dismissed.

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: August 05, 2021

Residential Tenancy Branch