



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, OLC, FFT

Introduction

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

- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- an order permitting the tenants to change the locks to the rental unit and property;
- 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.

One of the named tenants and an additional tenant attended the hearing with Legal Counsel, as well as a Paralegal who observed only and did not take part in the hearing. The landlord also attended with the landlord's daughter to assist with translation. The landlord was also accompanied by the landlord's spouse, who did not take part in the hearing.

The landlord's daughter was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language, and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The parties and the additional tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

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

Issue(s) to be Decided

- Have the tenants established that the landlord's right to enter the rental unit should be suspended or limited?

- Have the tenants established that the tenants should be permitted to change the locks to the rental unit and gate on the rental property
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to entering onto the rental property?

Background and Evidence

The first tenant (YS) testified that this month-to-month tenancy began on January 1, 2022 and the tenants still reside in the rental unit. Rent in the amount of \$2,200.00 per month is payable on the 1st day of each month, and there are no rental arrears. A copy of the tenancy agreement has been provided for this hearing which shows that the rental amount was \$2,400.00, which is crossed out and \$2,200.00 is written thereon. The tenant testified that on January 2, 2022 the tenants paid a security deposit to the landlord in the amount of \$1,200.00 as well as a pet damage deposit of \$600.00, both of which are still held in trust by the landlord. The rental unit is single family home, occupied by the tenant, as well as the tenant's sister and father; the landlord does not reside on the rental property.

The tenant further testified that the rental home had been advertised on Facebook Marketplace as a 3 bedroom, 1 bathroom home for \$2,200.00 per month, and the tenants viewed the rental home prior to signing the tenancy agreement. The landlord did not mention that only a portion of the house was part of the rental. However, a couple of weeks or a month after moving in, the tenant heard a saw and construction and went to the back yard finding construction workers and the landlord. It appeared that construction was just beginning; the tenant looked through a door and there were no floors or walls.

The landlord has attended on the property many times, usually without notifying the tenants and went through the other side of the yard entrance with construction workers and started to work. The landlord has only attended on the property to do a condition inspection on 1 occasion, but has been inside the rental unit about every 3 days to do construction. On 1 or 2 occasions the landlord entered the tenant's room to look at the electrical or to reset the breakers. On another occasion the landlord texted the tenant, and the tenant had to go home to let the landlord and a worker in.

A by-law officer also attended on 1 occasion, but called the tenant prior to attending. He and the landlord were talking while the tenant stayed inside the tenant's room. After about 10 minutes, the by-law officer was about to leave, and the tenant called him. The by-law officer explained that because the construction was still going ahead and there was no stove or oven, according to the City that is not considered a suite, so there was not much

that the by-law officer could do. However, if the tenant saw any furniture or appliances being moved in to let the by-law officer know and he would go to the next step.

The situation has been very stressful for almost a year for the tenants. They hear a bunch of guys talking and construction noise. The tenant's dad, sister and dog are very stressed. The tenants attempted to be civil and come to an agreement, but it didn't go well and lead to the family fighting; it's been very hard. It appears that the construction is almost done.

The additional tenant (SS) testified that when viewing the rental unit, the landlord did not mention that only a portion of the home was included.

The tenant has been very stressed. The construction wakes up the tenant who wants to sleep later on weekends, but the noise is very loud right beside the tenant's room. The wall is very thin and the tenant hears them talking even after 9:00 p.m. Sometimes the tenant has been home alone and finds a bunch of guys walking in the back yard. The tenant asked who they were and they said the landlord gave them permission to be there. One day a painter was there who had an argument, and was aggressive to the tenant, using the "F" word. A month ago, men were there having a barbeque and beer, and refused to leave. The tenant heard the noise and went outside learning that a man had punched the tenant's dad, and the tenant called 911. The landlord was also there. When the police came the landlord told them that it's a shared property, but that's not true. The tenants didn't feel safe and were very frustrated. The tenants told the police to kick the men out, and they left and were told not to return that day. One day there were 2 little kids running around the back yard. The tenant has been yelled at and does not feel safe.

The landlord testified that the tenants were told that construction would be starting and they said that was fine. On February 1, 2022 the parties conversed by text message, and the tenant asked the landlord to finish the work in the back yard; fixing pipes outside, and a room still needed to be painted.

The barbeque was on the landlord's side of the property. The tenants asked for a 3 bedroom unit, and the landlord showed them that, and that 1 room needed to be painted because there's another suite. The landlord told the tenants that the landlord would be renovating the suite on the 1st day in January. The advertisement specified 3 bedrooms and 1 bathroom, and now if you count the secondary suite, it's 4 bedrooms. The landlord has not rented out the 4th room, but uses it for his own personal use. Whenever the landlord enters, he enters not on the tenant's portion, but through a yard gate which is the landlord's side and a common area. The landlord told the tenants in a verbal conversation, and didn't know how to write that into the tenancy agreement.

SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

The tenancy agreement clearly states an address with no indication, or as testified by both tenants, no indication prior suggesting that the landlord uses a portion of the property. The tenancy agreement is key to the relationship by a landlord and a tenant, and there have been numerous breaches by the landlord being on the property and entering the property, but there is no landlord's portion. The tenants want reasonable use of the property which is constantly disrupted by the landlord and recreation activities. The evidence is sufficient to show that the landlord is not complying with Section 29 of the *Act*. Because of the frequency, the tenants should be given permission to change the locks and give a key to the landlord at the end of the tenancy, including access to the back yard. The landlord cut the lock on the gate, not respecting boundaries included in the tenancy agreement.

SUBMISSIONS OF THE LANDLORD:

The construction work is completed, and the landlord is not renting out the other room but using it for personal use and has a shed on the property with tools as well.

Analysis

I have reviewed the tenancy agreement, which gives an address of the rental unit, but does not indicate that only a portion of the rental property is included. During the course of the hearing, I referred the landlord to paragraph 13 of the tenancy agreement, which states as follows:

13. LANDLORD'S ENTRY INTO RENTAL UNIT

- 1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- 2) The landlord may enter the rental unit only if one of the following applies:
 - a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
 - i) the purpose for entering, which must be reasonable, and
 - ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
 - b) there is an emergency and the entry is necessary to protect life or property;

- c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
- d) the tenant has abandoned the rental unit;
- e) the landlord has an order of an arbitrator or court saying the landlord may enter the rental unit;
- f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.

3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may apply for an arbitrator's order under the *Residential Tenancy Act*, to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

The *Residential Tenancy Act* also includes everything that is in paragraph 13 of the tenancy agreement. There is no doubt that the landlord and the landlord's friends and construction workers have been on the property and inside the rental home contrary to paragraph 13 of the tenancy agreement. It also concerns me that one of the persons on the property punched one of the tenants.

The landlord's position is that the advertisement stated that the rental unit has 3 bedrooms, but now has 4 bedrooms. That is not relevant, considering that the landlord created another space for the landlord's personal use, without specifying that in the tenancy agreement.

In the circumstances, I find that the tenants have established that the landlord should be ordered to comply with the *Act*, and that the tenants should be permitted to change the locks to the rental unit and the gates, and that the landlord's right to enter the rental unit should be suspended, and I so order.

The tenant also testified that the advertisement stated that rent was \$2,200.00 per month, however the landlord created a tenancy agreement for \$2,400.00 per month and \$1,200.00 security deposit. The landlord changed the rental amount on the tenancy agreement to the advertised amount of \$2,200.00 per month, but still collected \$1,200.00 security deposit. A landlord may only collect half a month's rent as a security deposit, which is \$1,100.00. The *Act* also states that if a landlord accepts a security deposit greater than half a month's rent,

the tenant may deduct the overpayment from rent. I find that the tenants are entitled to deduct the \$100.00 overpayment from rent.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants in the amount of \$200.00 and I order that the tenants be permitted to reduce rent by \$200.00 for a future month, or may otherwise recover it by filing the monetary order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby suspend the landlord's right to enter the rental unit and property until the tenancy ends in accordance with the law.

I further order that the tenants are permitted to change the locks to the rental unit and to the gate(s), and must provide the landlord with the keys at the end of the tenancy.

I further order the landlord to comply with the *Residential Tenancy Act* and the tenancy agreement by refraining from entering the rental property until the tenancy has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00, and I order that the tenants 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: September 02, 2022

Residential Tenancy Branch