Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause and for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The hearing did not conclude on the first day and was adjourned for continuation of testimony. The tenant and an agent for the landlord company attended on both days of the hearing and both parties gave affirmed testimony. The landlord also called a witness who gave affirmed testimony, and the parties both provided evidence in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 1, 2004 and the tenant still resides in the rental unit. Rent in the amount of $855.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On February 2, 2004 the landlord collected a security deposit from the tenant in the amount of $370.00 which is still held in trust by the landlord.

The landlord's agent testified that the rental unit is an apartment in a complex that contains 28 rental units. The building requires re-plumbing and on May 7, 2012 all tenants were provided with a letter indicating that the repairs are required due to water leaks in the building. The landlord also held an information meeting for the tenants on

June 12, 2012 regarding questions or concerns of tenants with respect to the repairs, however this tenant did not attend. A package of photographs was provided by the landlord for this hearing which show the ceilings of the rental unit which appear to be marked with water damage and mould, and the landlord's agent testified that the photographs are a true illustration of the damage in the rental unit.

The landlord's agent further testified that the tenant has denied access to the landlord's agents and contractors. The work was to begin on June 18, 2012 but the tenant had posted a notice to the door of the rental unit, a photograph of which was provided for this hearing, and it states:

> "Entry into this suite is denied until the landlord fulfills their duties and responsibility to the tenant's tenancy agreement, the Residential Tenancy Act, health regulations and common law. Heads up! This will require contracters to file a hazardous material survey and a notice of project describing the risks of asbestos exposure to tenants and the procedures to be taken to avoid this exposure."

Worksafe BC also contacted the landlord's agent after receiving a complaint from the tenant and stated that an inspection was required. A representative from Worksafe BC was there 4 times, on June 20, 21, 26 and another day after that in 2012. The representative also told the landlord's agent that he had told the tenant that no significant issues were identified, and no orders were written. The landlord's agent further testified that he spoke with the representative the day before this hearing commenced, and still no issues, other than administrative issues were noted. However, the tenant denied the landlord's agents and contractors entry to complete repairs until July 9, 2012, at which time a wall was cut open. On July 11 and 12, 2012 the contractors worked on a plumbing main that connects water pipes to other suites, and on July 16 an inspection for the fire wall between units was conducted, however the tenant would not allow further entry and the fire-wall, or fire-stop is not yet completed as a result. The plumbers and the landlord's caretaker went to the door, and the tenant appeared nude and told the plumber that if he tried to enter again, the tenant would sue.

The landlord's agent also testified that the tenant posted notices over all of the mail boxes in the lobby of the rental complex, and provided a photograph of the notices. The landlord's agent contacted the Residential Tenancy Branch and was advised to give the tenant a letter asking that the tenant to stop posting notices, which the landlord's agent did. The tenant then posted notices again, although this time the tenant put a letter under the doors of each rental unit. When questioned about how the landlord's agent knows that notices were placed under each rental unit door, the landlord's agent replied

that a tenant gave a copy to him, and the contractors also told the landlord's agent that they had seen a copy of the notice in some of the rental units.

The tenant also contacted Coastal Health and the fire department, who contacted the landlord's agent. The tenant's actions have caused a delay in getting the repairs completed, which has caused unnecessary expense to the landlord as well as risk of mould and fire-stops which have not yet been completed. The landlord's agent is concerned for the health and well-being of other tenants.

The landlord issued the tenant a 1 Month Notice to End Tenancy for Cause on June 26, 2012 by posting it to the door of the rental unit. A copy of the notice was provided for this hearing, and it is dated June 26, 2012 and contains an expected date of vacancy of July 31, 2012. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
    - put the landlord's property at significant risk.

On July 23, 2012 the contractors and caretaker attempted to gain access to the rental unit again, but were denied entry by the tenant who stated that the landlord's agent had taken photographs to use against the tenant. The tenant is very aggressive and the contractors and caretaker have some fear in the way the tenant approaches them.

No other tenants have complained about the work performed by the landlord, nor have any other tenants denied entry into their rental units by the landlord's contractors.

The tenant testified that the parties had been to dispute resolution prior concerning a notice to end tenancy issued by the landlord. A copy of a portion of the Decision has been provided for this hearing, but not the entire Decision. The tenant testified that the landlord had issued a notice to end tenancy due to an uninsured motor vehicle in the parking area of the rental complex. The notice to end tenancy was cancelled at dispute resolution.

The tenant further testified that the landlord issued the notice to end tenancy dated June 26, 2012 prior to the contractors being denied entry in July, 2012, and the landlord did not use an approved form as a notice to enter as required under the *Residential Tenancy Act.* The tenant referred to a 1982 decision which stated that a notice to end tenancy issued by a landlord must give particulars of the reason(s) for ending the

tenancy. The tenant stated that the notice issued by the landlord leaves open wide, general reasons and not defined relevant facts. The tenant feels that the landlord's over-arching reason to end the tenancy was because of notices the tenant posted advising tenants of their rights, not because the tenant denied access to the rental unit. The tenant sees it as an attempt by the landlord to silence the tenant.

The tenant stated that the application for a monetary order is for aggravated damages in the amount of $20,000.00 for the landlord's continued vexatious actions in issuing another notice to end tenancy. An eviction notice is the worst thing that a tenant can receive by a landlord and the landlord holds an unequal power of authority. The tenant also testified that in determining the quantum, the tenant was told by an Information Officer of the Residential Tenancy Branch that the Tenant's Application for Dispute Resolution could not be accepted without an amount, so the tenant picked $20,000.00, and stated that the Dispute Resolution Officer should consider the amount or another amount.

The tenant further testified that for 3 days during the month of July, 2012 the tenant was told that he had to leave the rental unit for 8 hours on each of those days. Construction started on May 14, 2012, and the tenant has been bothered by noise, but did not elaborate on any disturbances. The tenant also testified that the landlord is required under the *Act* to provide compensation to tenants for restricting a service or facility, and the landlord has not provided the tenant with any compensation. However, the tenant's application for a monetary order is not with respect to the loss or restriction of a service or facility, but for aggravated damages for the landlord's actions in issuing another notice to end tenancy.

At the commencement of the second day of the hearing the tenant applied to amend the application to include other damages, however that application was denied. The hearing was almost completed, and the landlord did not have any opportunity to prepare for a hearing respecting other damages. The tenant is at liberty to make further applications, however was advised that this hearing remained focused on the tenant's application for an order cancelling a notice to end tenancy for cause and for a monetary order for aggravated damages.

The landlord's witness testified to being an employee of the company completing the repairs to the rental complex, and has been employed with the company since 1988. The witness further testified that Worksafe advised that there were no outstanding orders for the company for repairs.

The tenant was given a notice to enter the suite and denied access to the witness on June 18, 2012, and the notice was given the week prior. When the witness arrived, he

found a note on the tenant's door denying entry which said something about Worksafe, and notified management of the apartment complex. The witness knocked and was told through the door that the contractors could not enter. The foreman and lead hand told the witness that they were confronted by the tenant about having no right to enter other suites. After the first day of the hearing, the tenant allowed entry to the rental unit but no entry was permitted by the tenant until July and work was delayed until July 9, 2012 which put them behind schedule 3 weeks.

The witness has been in the rental unit and witnessed mould growth and it appeared that it had been there for quite a long time; the whole drywall area was saturated, and the witness believes it had been there for weeks.

The work was completed in the rental unit sometime between the 2 dates of this hearing.

The landlord and the tenant both provided multiple pages of evidentiary material for this hearing, and the portions that I find relevant to this case are referred to in the Analysis below.

Analysis

Firstly, the evidentiary material of the tenant speaks to Administrative Penalties, and I refer the tenant to Policy Guideline 41:

> **DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY**
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> The Legislation identifies seven elements that must be considered when applying an administrative penalty:
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> Previous enforcement actions for contraventions of a similar nature by the respondent;
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> The gravity and magnitude of the contravention;
> The extent of harm to others;
> Whether the contravention was repeated or continuous;
> Whether the contravention was deliberate;
> Whether the respondent derived economic benefit from the contravention;
> The respondent's efforts to correct the contravention.

In this case, I find that the tenant has not satisfied the required elements. The tenant has provided me with a portion of a previous Decision wherein the tenant stated that a notice to end tenancy for cause issued by the landlord was cancelled at a dispute resolution hearing, but has not provided me with the entire Decision and therefore, I have insufficient evidence of the facts, analysis and conclusion. Further, in respect of Administrative Penalties, a person requesting such penalty must make the request to

the Residential Tenancy Branch at the mailing address outlined on the Notice of a Dispute Resolution Hearing in order for an investigation to be considered.

With respect to the case from 1982 cited by the tenant, the current *Residential Tenancy Act* was enacted in 2006, which contains a section requiring a landlord, and not a tenant, to use the approved form to end a tenancy. That approved form contains the reasons for ending a tenancy that are permitted under the *Act.* I find that the landlord has used the approved form and has placed checkmarks in the boxes beside the reasons that the landlord has issued the notice. The tenant testified that the case cited by the tenant states that a notice to end tenancy must contain particulars. The case is very dated and the *Act* has corrected the issue referred to by the tenant from that case. Therefore, the tenant's suggestion that the notice ought to be cancelled because it doesn't contain particulars of the reasons for ending the tenancy cannot succeed.

I have reviewed the photographs provided by the landlord and it is clear to me that the ceiling in the rental unit was in serious need of repair. I also accept the testimony of the landlord's agent that the underlying issue was a need for plumbing repair and then repairing the damaged ceiling in the rental unit.

I cannot consider any evidence of the tenant's refusal to allow entry to the rental unit after the date the notice to end tenancy was issued in determining whether or not the notice should be cancelled. It is clear in the testimony that the landlord asked the tenant to stop posting notices for other tenants to see, but I do not find it reasonable in the circumstances to believe that the landlord issued the notice to end tenancy to silence the tenant. The landlord has an obligation to provide all tenants with a rental unit in a state of decoration and repair that makes it suitable for occupation, and if a landlord fails to do so, the consequence could be a monetary order against the landlord for the landlord's failure to maintain rental units. The landlord's witness testified that the tenant's refusal to allow entry on June 18, 2012 caused a delay until July 9, 2012. The tenant provided no testimony that would satisfy me that the landlord did not have a need, right or obligation to enter the rental unit, or that the tenant was not provided with the required notice under the *Act.* The tenant asserted that the landlord did not provide notice to enter on June 18, 2012 in an approved form, however, the *Act* does not contain that requirement. The *Act* specifically states that:

> **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;
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> (d) the landlord has an order of the director authorizing the entry;
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> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.

I have reviewed the notice to enter and I find that the landlord has complied with Section 29(1) (b).

The landlord's agent and the landlord's witness both testified that Worksafe issued no orders, and I find no reason in the testimony by either party that would justify the tenant's actions in refusing entry to the rental unit.

However, in a case where a tenant has disputed a notice to end tenancy, the onus is on the landlord to prove that the notice was issued for a cause set out in the notice, and in this case, whether or not prior to the date the notice was issued, the

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.

I do not accept that the landlord issued the notice to silence the tenant. As previously stated in this Decision, the landlord had an obligation to complete the repairs, whether or not the tenant agreed. I further find that the tenant significantly interfered with the work the landlord had to complete which seriously jeopardized the health or lawful right of the landlord or other occupants by refusing the landlord's contractors entry to the rental unit, and put the landlord's property at significant risk of further deterioration.

The landlord's evidentiary material includes a document dated July 12, 2012 on the landlord's letterhead referring to this hearing. The document states that the tenant has significantly interfered and disturbed other residents in the building by posting letters

above the mail boxes, on the door of the tenant's rental unit and giving letters to all residents by posting the letters on their doors. I do not find the actions of the tenant to be sufficient reason to end the tenancy. Flyers are distributed to residential properties on a daily basis, and occupants are free to read or discard them. I find the tenant's documentation to be no different, even if the writer's information is contrary to the landlord's intention. However, the document of the landlord goes on to say that the tenant has jeopardized the health and safety of other occupants as seen by the photographs showing mould growth which the tenant never informed the landlord of. I heard no testimony from the landlord's agent of the tenant's failure to inform the landlord of such deterioration. However, the document of the landlord further states that the tenant has put the property at significant risk by allowing leaking pipes in the rental unit to continue with mould growth and not inform the landlord.

I have also reviewed the tenancy agreement which states: "22. SERVICE OF NOTICE. A tenant shall accept any notice, order, process or document required or permitted to be given, when served in accordance with the Act." In this case, I find that the tenant has breached that term of the tenancy agreement by refusing entry to the rental unit after being provided with written notice the week prior.

The evidentiary material of the tenant indicates that the landlord "...failed to inform the tenant in writing, as required by the Residential Tenancy Act Policy Guideline number eight: unconscionable and material terms, that there were problems, that they believed the problems to be breaches of material terms of the tenancy agreement, that the problems must be fixed by a deadline included in the letter, and that if the problems are not fixed by the deadline, the landlord will end the tenancy." I have read Policy Guideline 8 which describes an unconscionable term in a tenancy agreement as a term that:

> "oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.
>
> "The burden of proving a term is unconscionable is upon the party alleging unconscionability."

I find that the tenant has failed to prove that any term of the tenancy agreement is unconscionable.

The material also states that the landlord cannot end a tenancy for a breach of a material term of the tenancy agreement without written warning, according to Policy

Guideline 8. The landlord has not checked off the box on the notice to end tenancy for breach of a material term of the tenancy agreement, and I find that the landlord therefore does not have to prove that a material term was breached by the tenant. The *Act* permits a party to make an application for dispute resolution for such a breach, but I find that the landlord has not relied on material terms, but has chosen to end the tenancy as a result of the tenant's refusal to allow the landlord to protect and maintain the residential property.

The evidentiary material also states that the landlord has contravened Section 27(1) of the *Act* regarding termination or restriction of a service or facility. I have heard no testimony of any termination or restriction of a service or facility, only of an attempt by the landlord to complete repairs which required the rental units affected to be vacated for short durations. Further, the tenant has made it abundantly clear that the tenant's application for a monetary order is for aggravated damages for continuous and persistent issuances of notices to end tenancy. The tenant testified to a previous hearing, but I do not accept that one previous notice issued by the landlord is continuous or persistent, and I do not have the benefit of a copy of the Decision in order to determine the reasons for cancelling the notice to end tenancy.

I find that the landlord was justified in issuing the notice to end tenancy for the tenant's failure to comply with paragraph 22 of the tenancy agreement, the tenant's failure to notify the landlord of damage in the rental unit and the tenant's refusal to allow repairs to be completed to the rental unit which put the landlord's property at significant risk.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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 10, 2012.

Residential Tenancy Branch