



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bristol Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The tenant has applied for an order cancelling a notice to end tenancy for cause. The landlord has applied for an Order of Possession for unpaid rent or utilities, for an Order of Possession for cause; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The hearing did not conclude on the first day scheduled, and was adjourned for a continuation of testimony. The tenant attended the hearing on both scheduled days, gave affirmed testimony, and called 2 witnesses who also gave affirmed testimony. The landlord company was represented by an agent who attended on both days, gave affirmed testimony and called 4 witnesses who also gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the following claims:

- for an Order of Possession for unpaid rent or utilities;
- for a monetary order for unpaid rent or utilities;
- for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the notice to end tenancy for cause be cancelled?
- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 1, 2013 and expires on May 31, 2014. The tenant still resides in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On May 29, 2013 the landlord collected a security deposit from the tenant in the amount of \$425.00 as well as a pet damage deposit in the amount of \$425.00. Both deposits are still held in trust by the landlord.

The landlord's agent further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on February 25, 2014 by another employee of the landlord, and the landlord's agent was also present, but does not recall if it was posted to the door of the rental unit or personally handed to the tenant. A copy of the notice has been provided for this hearing and it is dated February 25, 2014 and contains an expected date of vacancy of March 31, 2014. The reasons for issuing the notice are:

- 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;
 - put the landlord's property at significant risk;
- Tenant has caused extraordinary damage to the unit/site or property/park;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On February 12, 2014 the landlord had scheduled an inspection of the rental unit for February 13, 2014 but when the landlord's agent and a maintenance person arrived, the tenant wasn't home and the rental unit could not be accessed because the tenant had installed a new dead bolt and a pad lock on the door. On February 13, 2014 the landlord's agent prepared a letter to the tenant about the locks requesting that the tenant change them back to the original locks and that letter was posted to the door of the rental unit on February 14, 2014.

On February 20, 2014 the landlord's agent posted another inspection notice to the door of the rental unit scheduling the inspection for February 24, 2014. The landlord's agent and other employees of the landlord company inspected on that date and found that the rental unit was very cluttered with washers, dryers, a lot of automotive parts, car batteries, bikes, boxes, etc. and it was difficult to move in the rental unit. The landlord's agent was not able to inspect the master bedroom because the tenant's dog was in there. The landlord's agent testified that there were washers to the right and the left of the front door, as well as one in the kitchen and a washer or dryer under the window in the dining room. It's an old building and there are no hook-ups for washers or dryers in the rental unit. Further, the storage room contained more automotive parts, rubber-made containers, yard equipment and boxes all stacked up. The kitchen was also dirty with an infestation of cockroaches. The landlord's agent told the tenant that he had too much stuff and the tenant became aggressive while stating that he would have no part of down-sizing, so the landlord's agent walked out of the suite. At that time, the landlord's agent noticed that the pad-lock had been removed but the deadbolt was still on the door and the landlord does not have a key.

The landlord's agent also conducted an inspection for the smoke detector on April 8, 2014. When the landlord's agents arrived, the tenant said he'd be right back but had to take the dog out, and he never returned. The deadbolt was still on the door. The landlord's agent went to the office and wrote another letter to the tenant stating that the landlord was not able to do the test on the smoke detectors and re-scheduled the inspection for April 9, 2014.

On April 9, 2014 the tenant was home and the landlord's agent noticed that the living room was cleaned up but the other rooms had not changed and washers are still in the living room.

The landlord's first witness (MM) testified that he is the resident manager of the rental building and was present for the smoke detector inspection on April 9, 2014. He stated that the rental unit was jam packed and there were extra washers and dryers. The witness could not get into the master bedroom to inspect because the tenant's dog was in there. The only part of the rental unit that the landlord's agents could move around in was the living room and part of the kitchen. He also testified that the pad lock installed by the tenant had been removed but the deadbolt remained on the door and the landlord does not have a key.

The landlord's second witness (VT) testified that he is a maintenance worker for the landlord company and attended the rental unit during an inspection 2 or 3 weeks ago, or perhaps last Tuesday and noticed lots of stuff, lots of cockroaches and a bad smell in the rental unit. He further stated that he believes there was 1 washer or dryer in the

kitchen, 1 in the living room and 1 in the hall on the right of the entry door. The small bedroom contained lots of clothes and boxes. The storage room was full of tools, boxes, clothes and a chair. The bathroom was a mess, with a big water bottle in the bathtub, 3 buckets and lots of "stuff." The kitchen contained a table, cooking pan, pizza, dishes, cups, bottles and beer cans. The witness saw 2 fish tanks in the living room and stated that everywhere in the rental unit is piled with boxes and clothes.

The landlord's third witness (AP) testified that he is the head of the maintenance crew for the landlord company and was present in the rental unit for an inspection but can't remember when. He also guessed that an inspection was done on the smoke detector in the rental unit last Tuesday. While in the rental unit the witness saw clothes and boxes everywhere, and cockroaches. The living room contained 2 fish tanks, boxes everywhere and clothing and more boxes on the floor. The witness does not recall seeing any washers or dryers but perhaps a dishwasher. The small bedroom contained clothes everywhere, boxes and cockroaches. The storage room contained tools and boxes.

The landlord submits that the unclean unit and cockroaches in the rental unit of the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Further, the tenant has put the landlord's property at significant risk and has caused extraordinary damage to the rental unit by installing a deadbolt and padlock. The landlord cannot enter the rental unit in cases of emergency and the holes left in the door frames from the tenant's locks have damaged the rental unit. The tenant has not done the required repairs resulting from those locks.

The landlord's agent further submits that the tenant has breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so and pointed out paragraph 19 of the tenancy agreement, a copy of which has been provided and states as follows:

"19. Entry. The tenant shall not unreasonably withhold consent to the Landlord to enter the Tenant's premises when the proper request is made at the time of entry; and shall permit the Landlord or his agents or tradesmen, entry at reasonable times on proper notice to view the state of repair or to repair or alter the premises, or to show the premises to prospective purchasers or tenants. The Landlord or his authorized agent may, in case of emergency and as otherwise provided for in the Residential Tenancy Act exercise his right to enter the premises."

The landlord asks for an Order of Possession and to recover the filing fee from the tenant.

The tenant testified that the deadbolt on the rental unit was not functioning and he asked an agent for the landlord for a new one just before Christmas. The tenant installed a new one the next day, and did not have the money to get an extra key for the landlord, but agrees to provide one. The tenant is concerned, however, that if an agent of the landlord enters the rental unit in the absence of the tenant, the tenant's dog may attack and the tenant does not want to be criminally or civilly liable and wants a waiver in writing from the landlord.

The tenant further testified that during the first inspection, the landlord's agent and about half a dozen other people attended as well; the landlord's agent even looked inside the fridge.

The tenant denies that any emergency exit is blocked; the rental unit is an apartment style with common stairs to the floors and only one entry into the rental unit from there. There are sliding glass doors to the balcony and the rental unit is on the 2nd floor. Neither the balcony door nor the entry door is blocked.

The tenant also testified that there is only 1 washer and 1 dryer in the rental unit and agrees there are no hook-ups. The tenant's father gave the appliances to the tenant, they are not being used, and are for future use. The tenant further testified that there are numerous boxes in the rental unit in various rooms, but some are empty. The tenant works long hours 6 days per week and has not yet broken them down and put them in the recycling bin. The other boxes contain items such as a collection and other boxes contain items that he has not yet unpacked. The tenant has 3 or 4 bikes, a Snap-on tool box, some carpentry tools, and 1 battery sitting on ply-wood on the floor of the storage room. The tenant states that the landlord's agent told him he was a hoarder, which he denies, and was offended at the statement and the number of people who attended to do the inspection.

The tenant agrees that he is not a clean housekeeper but has had the rental unit sprayed for bugs about 2 weeks ago.

The tenant's first witness (CT) testified that she is a friend of the tenant and visits the rental unit almost daily. The witness testified that there is only 1 dryer in the hallway and a washer in the kitchen and neither is hooked up. The witness was in the rental unit during this hearing and stated that there are boxes in the storage room and a few in the bedroom. The witness attended the rental unit to help clean after an exterminator sprayed for bugs.

The tenant's second witness (WH) testified that the rental unit is abit untidy but a person can walk around freely. The small bedroom contains a couple of bikes and there are

boxes to one side of the storage room. The witness has only seen 1 washer and 1 dryer. The bathroom and living room are fine. The witness also testified that he was present for the inspection on April 9, 2014 and there was a dryer in the living room and a washer in the kitchen.

Analysis

Where a tenant disputes a landlord's notice to end a tenancy, the onus is on the landlord to prove the validity of the notice, which often includes the reason for issuing it. The parties have entered into a contract, and the landlord has asked to break that contract. In order to do so, the landlord must end the tenancy in accordance with the *Residential Tenancy Act* and establish the reason(s) set out in the *Act*.

In this case, I have reviewed the notice to end tenancy and I find that it is in the approved form and contains appropriate information in compliance with the *Act*. I further find that the effective date of vacancy contained in the notice is consistent with the *Act*, and that the tenant has disputed the notice within the time required under the *Act*.

With respect to the reasons for issuing the notice, the tenant denies being a hoarder but agrees that he is not a good housekeeper. He also disagrees that the rental unit is difficult to move about and that he has several washers and dryers. The tenant's witnesses have both testified to the same. The landlord's witnesses were inconsistent with their version of the state of the rental unit during an inspection, and I am not satisfied how many washers and dryers are in the rental unit. With respect to cockroaches, the *Act* requires a tenant to correct any damage caused by the tenant, which I find he has done by calling in an exterminator. That testimony was not disputed by the landlord.

I am not satisfied that the landlord has established that installing either the padlock or the deadbolt have caused extraordinary damage to the rental unit. The *Act* requires the tenant to repair any damage caused by the tenant prior to vacating the rental unit. There is nothing before me to prove that the damage caused is extraordinary.

With respect to the deadbolt being installed, the landlord claims that the tenant has breached a material term of the tenancy by failing to provide the landlord with a key and pointed out paragraph 19 of the tenancy agreement. The tenant firstly testified that he did not have the money to provide the landlord with a key and installed the lock in December, 2013. The landlord does not yet have a key after almost 4 months. The tenant then testified that he is concerned about his dog attacking and any civil or criminal liability resulting from that. The term in the tenancy agreement states that the

tenant shall not, "...unreasonably withhold consent to the Landlord to enter the Tenant's premises when the proper request is made at the time of entry ..." The *Act* states that either the proper notice is given or the tenant gives permission at the time of entry:

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.

I find that portion of the term to be contrary to the *Act* and not enforceable. However, the term goes on to say: "... and shall permit the Landlord or his agents or tradesmen, entry at reasonable times on proper notice to view the state of repair or to repair or alter the premises, or to show the premises to prospective purchasers or tenants." I find that the landlord did give notice to the tenant, but did not contemplate that posting it on the door of the rental unit is deemed to have been given 3 days later, and therefore posting the notice on February 12, 2014 for an inspection to take place the following day is not sufficient notice, and I cannot find that the tenant breached the *Act* or the tenancy agreement on that occasion. It's unclear in the evidence before me why the tenant did not return to the rental unit on April 8, 2014 or if sufficient notice had been given by the landlord, but the smoke detector inspection took place on April 9, 2014. Again, I cannot find that the tenant breached the *Act* or the tenancy agreement on that occasion.

The term in the tenancy agreement also states: "The Landlord or his authorized agent may, in case of emergency and as otherwise provided for in the Residential Tenancy Act exercise his right to enter the premises." The landlord's agent testified that on February 13, 2014 the landlord's agent prepared a letter to the tenant about the locks requesting that the tenant change them back to the original locks and that letter was posted to the door of the rental unit on February 14, 2014. The tenant has not provided the landlord with a key nor has the tenant returned the original locks to the rental unit. I am satisfied in the evidence that the tenant has not provided a key because the tenant fears his dog may attack, but the tenant has provided no evidence that the landlord was warned or told about that, and has not communicated any intention of allowing access in case of an emergency. In the circumstances, I find that the tenant has breached a material term of the tenancy agreement.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$50.00.

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: April 22, 2014

Residential Tenancy Branch

