



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: LAT OLC

Introduction

I find that the landlord was served personally with the Application for Dispute Resolution hearing package. Both parties were present at the hearing. This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order that the landlord ensure her privacy and reasonable enjoyment pursuant to section 28 and cease unnecessary noise;
- b) An Order that the tenant may change the locks on her unit to ensure her privacy;
- c) An Order that the landlords cease entering her unit or giving access to others and that the landlords obey the provisions of section 29 of the Act and give her notice of entry.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has failed to protect her rights to peaceful enjoyment contrary to section 28 of the Act and that she is entering her suite illegally contrary to section 29 so that the tenant needs to change locks and have the orders as requested?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the tenancy commenced in June 2013, rent is \$650 a month and a security deposit of \$325 was paid. The tenant submitted many photographs and statements to illustrate her allegations that the landlord or someone associated with the landlord is entering her unit and destroying her possessions. She said that she has many gifts and has them boxed carefully but she has found damage to her clothing, shoes and purses. She said there is no evidence of forced entry and all her possessions were put carefully back in their boxes so she did not discover this damage

for some time. She agreed that her door locks have been changed now, her mail is no longer being opened and the noise problem is alright now. She said the problem with noise was visitors being in the landlord's unit after 10 p.m.

The landlord denies ever entering the tenant's unit illegally. She said she always had permission when they entered to do repairs and the tenant was present. She denies ever damaging anything of the tenant's and said if this was happening, why did the tenant not communicate the problem to her before filing this application? The landlord said the tenant's gifts and items are fairly old and may have been damaged with damp or wear and tear. She pointed out that there is no evidence that they have damaged anything of the tenant's. She admits that they did open the tenant's mail once in error and she apologized for that at the time and again in the hearing. She said there was a child visitor who did it by mistake.

The landlord had served the tenant with a Notice to End Tenancy but it was not in the correct form according to section 52 of the Act so is not effective. However, the tenant said she wished to vacate anyway as she is frightened. The parties reached an agreement:

Settlement Agreement:

- 1. The tenancy will end on November 30, 2015 and the landlord will receive an Order of Possession for that date.**
- 2. The tenant will return all keys on November 30, 2015 as soon as she vacates.**
- 3. The landlord agrees she will return the tenant's security deposit if the unit is clean and undamaged.**

The parties were advised of the provisions of section 38 of the Act regarding the security deposit.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to (a) reasonable privacy, b) freedom from unreasonable disturbance and c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted. Page 6 of the

Residential Tenancy Guideline explains further that “inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord’s power to control” may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include “unreasonable and ongoing noise”.

I find in this case there is insufficient evidence that the landlord breached the tenant’s rights to quiet enjoyment. As the tenant said herself, there is no evidence of how her goods were damaged or who damaged them. I also find the parties have resolved the matters between them. Locks have been changed, there is no longer a problem with the mail or unnecessary noise.

As the parties requested that they resolve their dispute, I recorded the settlement pursuant to my authority under section 63 of the Act and am issuing an Order of Possession to give effect to the settlement.

Conclusion:

Pursuant to the Settlement Agreement, I find the landlord entitled to an Order of Possession effective November 30, 2015. The tenant must be served with this Order. If the tenant does not vacate the unit as agreed, this Order may be enforced through the Supreme Court of British Columbia.

I dismiss the Application of the tenant; she did not request the filing fee.

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: November 04, 2015

Residential Tenancy Branch

