



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, CNC, RR, LAT, O, MNR, MNSD, O, and FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, for a monetary Order for unpaid rent, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord #1 stated that on July 27, 2016 the Landlord's Application for Dispute Resolution and 50 pages of evidence that was submitted to the Residential Tenancy Branch on July 27, 2016 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, to reduce the rent, for authority to change the locks, and for "other".

The Tenant stated that he has difficulty with his memory and he cannot recall when, or how, the Tenant's Application for Dispute Resolution was served to the Landlord. The Agent for the Landlord #1 acknowledged receiving the Tenant's Application for Dispute Resolution.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

This hearing was first convened on August 16, 2016. A Residential Tenancy Branch Arbitrator adjourned that hearing to provide the Tenant with an opportunity to obtain legal counsel.

The Arbitrator did not consider any of the merits of the Applications for Dispute Resolution and is not seized of this matter. The Arbitrator is not able to proceed with this matter in a timely manner and I have, therefore, been directed to consider the merits of the dispute.

Neither party raised any concerns regarding this issue.

Preliminary Issue #2

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits me to sever claims that are not sufficiently related. In my view the most important issue in dispute at these proceedings is possession of the rental unit.

As the application for an Order of Possession and to cancel a Notice to End Tenancy directly relate to possession of the rental unit, I will consider those claims at these proceedings.

As the claim for unpaid rent is closely related to the Tenant's ability to continue to occupy the rental unit, I will consider that claim at these proceedings.

As the application for authority to change the locks relates to the Tenant's ability to occupy the rental unit without unreasonable interference, I will consider that claim at these proceedings.

I find that the Tenant's claim for a rent refund as a result of deficiencies with the rental unit is not sufficiently related to the right to occupy the rental unit. I therefore sever that claim from these proceedings. The Tenant retains the right to file another Application for Dispute Resolution in the event the Landlord does not comply with its obligation to maintain the property in a manner that complies with the *Residential Tenancy Act (Act)* or the tenancy agreement.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be set aside or should the Landlord be granted an Order of Possession?

Should the Tenant be granted authority to change the locks?

Is the Landlord entitled to a monetary Order for unpaid rent?

Should the Landlord be given authority to retain the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on November 16, 2004;
- the Tenant is still residing in the rental unit;

- the Tenant is required to pay monthly rent of \$708.00 by the first day of each month;
- a One Month Notice to End Tenancy for Cause was posted on the Tenant's door on June 27, 2016;
- the One Month Notice to End Tenancy for Cause declared that the Tenant must vacate the rental unit by July 31, 2016; and
- the One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the tenant or a person permitted on the property has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and the tenant or a person permitted on the property has put the landlord's property at significant risk.

In support of the One Month Notice to End Tenancy for Cause the Agent for the Landlord #1 declared that:

- there has been a cockroach infestation in the rental unit;
- this tenancy was the subject of a dispute resolution hearing on November 10, 2015;
- the parties reached a settlement agreement on November 10, 2015, in which the parties agreed to continue the tenancy;
- one of the terms of the settlement agreement is that the rental unit would be inspected on November 13, 2015 and thereafter at mutually convenient times;
- there was an understanding that the tenancy would continue if the Tenant cleaned up the rental unit;
- the Tenant has not maintained the rental unit in a satisfactory manner;
- the pest control company inspected the unit and declared the unit was dirty and unsanitary;
- when the photographs submitted in evidence were taken on May 10, 2016 there was a strong odour in the unit;
- the Tenant refused to allow the pest control company to treat the rental unit on July 06, 2016 and July 18, 2016; and
- the cleanliness of the rental unit impacts the entire building because it attracts insects and renders pest control treatments ineffective.

In support of the One Month Notice to End Tenancy for Cause the Agent for the Landlord #2 declared that:

- she has seen a female in the residential complex on a regular basis in June, July, August, and September of 2016;
- she believes the female is living in the rental unit on the basis of how often she is seen on the property;
- the Landlord does not know the identity of this female;
- this female has not been approved to occupy the rental unit and she may pose a risk to the residential property or to other tenants;
- tenants were given written notice of pest control inspections/treatments planned for July 06, 2016 and July 18, 2016;

- notices to enter rental units are always posted on the affected tenants' doors; and
- she does not know when the notices for inspections were posted for July 06, 2016 and July 18, 2016, as the Landlord does not record that information.

In response to the One Month Notice to End Tenancy the Tenant declared that:

- he has cleaned the rental unit since the photographs were taken on May 10, 2016;
- the rental unit is currently clean;
- although he does not recall the precise dates, he refused to allow a pest control technician to enter his rental unit on two occasions in July of 2016;
- he refused to allow the technician to enter his rental unit on one occasion because he had not received any notice of the Landlord's intent to enter the rental unit;
- he refused to allow the technician to enter his rental unit on another occasion because the technician came the day after the scheduled inspection;
- he does not have anyone living with him;
- he has a female, who is a close personal friend, visit him on a regular basis;
- this female occasionally stays overnight as his guest; and
- this female stayed with him for two weeks in the summer while she was "homeless".

The Landlord did not submit a copy of notices that informed tenants their units would be treated/inspected by a pest control company on July 06, 2016 or July 18, 2016. The Landlord submitted a notice of inspection for July 14, 2016 and July 12, 2016, but these do not appear to relate to pest control.

The Landlord submitted a report from a pest control technician, dated July 23, 2016, which indicates:

- this rental unit and one other unit required cleaning and were "unhealthy";
- the conditions of the rental unit and one other unit represents a "threat to the well being of the other tenants";
- the rental unit and one other unit provides "the perfect conditions for pests to grow"; and
- if these units are not cleaned as soon as possible, the effectiveness of treatment is in jeopardy".

The Advocate for the Tenant #1 stated that:

- there has been a marked improvement in the cleanliness of the rental unit since November of 2010;
- the rental unit is disorganized, but is not dirty;
- the photographs show there is no food/garbage left in the open;
- there are a lot of flies in the unit because there is not screen on the patio door; and

- the report from a pest control technician, dated July 23, 2016, does not declare that pests were detected in the rental unit.

The Landlord is seeking a monetary Order for unpaid rent, in the amount of \$2,782.00. The Agent for the Landlord #1 stated that since the Landlord filed the Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent of \$658.00, the Tenant has not paid any rent. The Tenant agrees that he owes rent in the amount of \$2,782.00 for the period ending October 31, 2016.

The Tenant is seeking authority to change the lock(s) to the rental unit. In support of this application the Tenant stated that:

- sometime in July of 2016 a person acting on behalf of the Landlord entered the rental unit while the Tenant was not at home;
- there was a guest in the unit when the person acting on behalf of the Landlord entered the unit;
- he understands that the person acting on behalf of the Landlord knocked on the door of the rental unit;
- he understands that the person acting on behalf of the Landlord entered the rental unit after his guest answered the knock;
- he does not think his guest "allowed" the person acting on behalf of the Landlord to enter the rental unit;
- on July 14, 2016 he heard a person acting on behalf of the Landlord unlock his front door; and
- when he went to the door the person acting on behalf of the Landlord told him that an entry had been scheduled for that day; and
- he did not receive notice of an scheduled entry for July 14, 2016.

Analysis

Section 47(1)(d) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk.

I find that the Landlord has submitted insufficient evidence that the cleanliness of the Tenant's rent unit jeopardizes the health or safety or a lawful right or interest of the landlord or another occupant or has put the landlord's property at significant risk.

My conclusion that that the condition of the rental unit is not grounds to end the tenancy pursuant to section 47(1)(d) of the *Act* is based, in part, on the photographs submitted in evidence by the Landlord. While those photographs depict a home that is somewhat disorderly, I cannot conclude that they establish that the rental unit is unsanitary. I specifically note that there is plastic under the litter box; there does not appear to be food left on counters; there does not appear to be an unusual amount of dirty dishes; the appliances and bathroom appear reasonably clean, and the Tenant appears to be

attempting to control insects by using a fly trap, although it appears to be time to replace that trap.

The *Act* requires tenants to maintain "reasonable health, cleanliness and sanitary standards". It is left to me to determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the personal standards of the arbitrator, the landlord, or a person inspecting the rental unit. I find that this unit is in far cleaner condition than many rental units I have seen and I find that it is reasonably clean.

In adjudicating this matter I have placed limited weight on the report from a pest control technician, dated July 23, 2016, in which the technician describes the rental unit as unhealthy and in need of cleaning. I find that this conclusion is not consistent with the photographs submitted in evidence and I cannot, therefore, rely on that declaration without testimony from the technician to explain how this conclusion was reached.

I placed limited weight on the report from a pest control technician, dated July 23, 2016, as it does not declare that there are an unusual number of pests in the rental unit. Even if I accepted the technician's conclusion that the rental unit provides "the perfect conditions for pests to grow", I could not conclude that there are currently pests in the rental unit. Section 47(1)(d) of the *Act* only allows a landlord to end a tenancy after a tenant has jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk. It does not allow a landlord to end a tenancy because the rental unit may contribute to a future problem.

I find that a landlord has the right to end a tenancy, in some circumstances, if a landlord is attempting to control a pest problem in the residential complex and a tenant does not allow the landlord to treat his/her rental unit, as that would directly contribute to the landlord's overall efforts to control pests.

On the basis of the undisputed evidence, I find that the Tenant refused to allow a pest control technician to treat his rental unit for pests on July 06, 2016 and July 18, 2016. I would be inclined to end the tenancy as a result of this failure to cooperate with pest control efforts, providing it could be established that the Landlord provided proper notice of the treatment on those dates.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant received notice of the inspection for one of the treatment/inspections, either the one scheduled for July 06, 2016 or July 18, 2016. Even if I accepted that the notice of inspection was posted on the Tenant's door, I find it entirely possible that the notice was removed by a third party and was not received by the Tenant. In the event that the Tenant did not receive written notice of the inspection on one of those dates, I find that the Tenant had the right to refuse entry to his unit until such time as he received notice that complied with section 29 of the *Act*.

In circumstances such as these, where the Tenant denied receiving a notice of entry, the Landlord had the option of either obtaining verbal authority from the tenant to enter the unit or to serve the Tenant with another notice to enter and to enter the rental unit the next day. This refusal to enter did not, in and of itself, prevent the Landlord from inspecting/treating the rental unit.

On the basis of the undisputed evidence, I accept that the Tenant received notice that his unit was going to be inspected/treated, although I am not certain if this was notice of the inspection that was completed on July 06, 2016 or July 18, 2016. In either event, I find that the Landlord has submitted insufficient evidence to show that the Tenant was given notice of an inspection for that date, as the Landlord alleges, or that the Tenant was given notice for the day before the technician attended, as the Tenant contends. In reaching this conclusion I was heavily influenced by the fact that the Landlord did not provide a copy of the notice of inspection that was allegedly given for July 06, 2016 or July 18, 2016.

As there is insufficient evidence to show that the pest control inspection attended the rental unit on the date the Landlord informed the Tenant the unit would be inspected/treated, I find that the Tenant may have had the right to refuse entry to his unit on the basis that the technician did not arrive at the rental unit on the scheduled date.

To provide some clarity to this tenancy, the Tenant has an obligation to allow a pest control technician to treat/inspect his rental unit if he receives notice of the inspection that complies with section 29 of the *Act*. Conversely, the Landlord has an obligation to ensure that the Tenant receives a written notice to enter the rental unit and that entry is restricted to the times/dates on that notice. In circumstances such as these, where the Tenant acknowledges he has a memory impairment, the Landlord would be well advised to personally serve the notice of entry and, if possible, to have the Tenant sign that notice to acknowledge receipt.

In the event that Landlord is able to establish that the Tenant refused to allow a pest control technician into the rental unit after the Tenant has received proper notice to enter, the Landlord may have ground to end this tenancy.

I find that the Landlord has submitted insufficient evidence to show that a guest of the Tenant jeopardizes the health or safety or a lawful right or interest of the landlord or another occupant or has put the landlord's property at significant risk. Regardless of whether this guest is living in the rental unit or visiting the unit on a regular basis, the Landlord has presented no evidence to show that this guest poses any sort of risk to other occupants or to the property. A mere speculation that a guest or unauthorized occupant may pose a risk is not grounds to end a tenancy.

As the Landlord has failed to establish grounds to end the tenancy in accordance with section 47(1)(d) of the *Act*, I dismiss the Landlord's application for an Order of

Possession and I grant the Tenant's application to set aside the One Month Notice to End Tenancy that is the subject of these proceedings.

Section 29(1)(a) of the *Act* authorizes a landlord to enter a rental unit if the tenant gives permission at the time of the entry. I find that there is insufficient evidence to establish that a guest acting on behalf of the Tenant did not give a person acting on behalf of the Landlord permission to enter the rental unit sometime in July of 2016 after that person knocked on the door of the rental unit. In reaching this conclusion I was heavily influenced by the absence of any evidence from the Tenant's guest who was present at the time of entry. In the absence of evidence from this guest I find it entirely possible that the guest permitted the entry.

On the basis of document #40 and the testimony of the Agent for the Landlord #2, I find that, on the balance of probabilities, a notice of entry was posted at the rental unit which informed the Tenant that the rental unit will be inspected on July 14, 2016. Even if I accepted that the Tenant did not actually receive this Notice, I find that the Landlord reasonably believed that a person acting on behalf of the Landlord had the right to enter the rental unit on July 14, 2016 on the basis of that Notice.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord has entered the rental unit without proper authority and I therefore dismiss his application for authority to change the lock(s) to the rental unit.

Section 26 of the *Act* requires tenants to pay rent when it is due. On the basis of the undisputed evidence I find that the Tenant owes rent of \$2,782.00 for the period ending October 31, 2016. I therefore find that the Tenant must pay the Landlord \$2,782.00.

As this tenancy is continuing, I have not applied the security deposit to the money owed for rent. In the event the rent of \$2,782.00 is not paid to the Landlord forthwith the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. In the event the rent of \$2,782.00 is not paid to the Landlord by the time this tenancy ends the Landlord has the right to apply the security deposit to this unpaid debt, pursuant to section 38(3) of the *Act*.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord's application for an Order of Possession is dismissed. The Tenant's application to set aside the One Month Notice to End Tenancy that is the subject of these proceedings is granted.

The Landlord has established a monetary claim of \$2,882.00, which includes \$2,782.00 in unpaid rent and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution, and I grant the Landlord a monetary Order for this amount. In the

event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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: October 07, 2016

Residential Tenancy Branch

