



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FFT

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause received August 13, 2020. The Notice claims that the tenant has been repeatedly late paying rent, that she has put the landlord's property at significant risk and that she has caused extraordinary damage to the rental unit or property. If proved, any of those three claims are lawful grounds for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the "RTA").

By amendment the tenant also claims an order restricting the landlord's right of entry and an order that the landlord comply with the tenancy agreement or the RTA. Both related to alleged wrongful entry by the landlord or her agent.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. The matter was adjourned from October 14 to October 21 to ensure all evidence had been properly traded.

Issue(s) to be Decided

Has the tenant given the landlord cause to end this tenancy under any of the three grounds claimed in the Notice? Has the landlord wrongfully entered the rental unit or property in a manner justifying a restriction on her right to enter?

Background and Evidence

The rental unit is a five-bedroom house. There is a written tenancy agreement. The tenancy started in June 2017. The monthly rent is \$2850.00, due on the first of each month, in advance. The landlord holds a \$1300.00 security deposit and a \$300.00 pet damage deposit.

The parties appear to have had a very good relationship throughout this tenancy and up to June 2020. At times the tenant had difficulty paying rent. The landlord worked with her and convenience her. As happens, there were breakdowns of various appliances during the first two years. The tenant politely informed the landlord and the landlord attended to repair or replacement in a timely manner.

All was good between the two until late June 2020 when the tenant reported that an area of the kitchen floor was “squishy.” The landlord quickly sent a repairman who determined that there had been a water leak, confirmed to be from the dishwasher, which had caused water to run into the framing of the house and down into the basement.

The escaped water caused considerable damage to the flooring and structure of the home. The landlord was required to conduct extensive repairs.

It became the landlord’s opinion that the water leak from the dishwasher was caused by the tenant or her three children failing to adequately clean food off plates and the like before putting them in the dishwasher. In her view the food clogged the dishwasher drain, resulting in the leak.

In the previous few months or so the tenant had informed the landlord twice of an “error code” coming up on the dishwasher. The landlord had sent her workman both times and they found in both cases the error code had been caused by a clog in the drain of the dishwasher. Once by a piece of glass and once by food chunks. There was no evidence of leaking.

The tenant denies that a clogged drain caused the leak discovered in June. She produces a repairman’s report and a video intended to show the leak was caused by a piece of particle board or melamine caught in a pipe and for which she was not responsible. She is of the view that it was only after she approached the landlord for compensating her for loss of use of the kitchen during repairs that the landlord decided to issue this Notice.

The landlord claims the tenant has been repeatedly late paying rent. She did not provide any particulars in the Notice though when she filed her evidence she made general reference to ongoing late payments and arrears.

The landlord's claim of "extraordinary damage" is a reference to the damage caused by the dishwasher leak and, as well, to the fact of animal waste being found on the rental unit floors, fencing and decking alleged to have been damaged by a bear or bears because the tenant did not properly attend to garbage disposal, various damage inside the home to drapes, a transition strip on the floor, dents in walls, dirty flooring and carpets, damage to the wooden deck outside the home, writing on the walls, fridge dents, missing lighting covers.

The tenant denies any extraordinary damage in the rental unit. She says that two pot lights have now been repaired and that the hanging light shade the landlord says is missing was not there on move-in. She says she has hired a cleaner. Since February she has painted two bedrooms in a general attempt to repair the premises from what she considers to be the normal wear and tear that one associates with raising three children.

Analysis

The Grounds for the Notice to End Tenancy

The Dishwasher Leak

A central question is what caused the dishwasher to leak water over such a time and to such an extent as to cause damage requiring extensive repair and renovation to the kitchen included replacement of the floor.

The landlord has not provided a convincing explanation for the leakage. Over the course of this hearing the landlord has indicated the leak was caused by chunks of food loosening a drain connection. Her handyman indicated on June 26 that the leak was caused by food blocking the dishwasher causing it to "back up and leak." The landlord's plumber WK inspected and found the drain and piping "water tight" thus dispelling the suggestion a drain connection had been loosened. WK, in his note states "a dishwasher service technician did the necessary repair works to internal leaky parts which was caused by food waste." In a note from the renovator June 25 it is indicated that an "emergency technician" determined water loss was from a dishwasher.

The obvious question is, given that twice before in this tenancy the dishwasher reported an error code because the drain was clogged, once by glass and once by food, then why was there no error code when it allegedly clogged a third time. This question was not answered by the evidence.

In my view the explanation for the dishwasher leak requires expert opinion in my view and none of the landlord's evidence comes from a person claiming to be an expert. Further, none attended this hearing to answer some obvious questions, like, "where was the water coming from" or "how was the water escaping the dishwasher" which is supposed to be a sealed appliance.

I find the tenant's evidence on the question to be equally unconvincing. According to her the repairman she had called diagnosed the problem and left her to remove the obstruction he had found, which she did with what appears to be a chopstick. I find it unlikely that a professional would not have simply removed the item with appropriate pliers and then checked that the dishwasher was working properly. Secondly, it was not adequately explained why this dishwasher had an approximately 4cm x 4cm plastic opening in its side that permitted considerable amounts of water to escape. Thirdly and obviously, if the obstruction the tenant removed had been there all along (as it must have been because the dishwasher was "built-in with no way for a person to physically insert the obstruction), then why wasn't the water leakage constant from when the tenant moved in and thus apparent to every tradesman who fixed it, tested it and confirmed it was functioning properly?

In result, both parties are unconvincing in their explanation about how the dishwasher happened to leak water. The burden of proof is, in this case, on the landlord because it is she who is asserting it was the tenant's (or the tenant's family's) fault. The landlord has failed to prove on a balance of probabilities that it was.

Repeated Late Payment of Rent

As stated at hearing, the landlord has failed to provide 'Details of Cause(s)' of the alleged repeated late payments in the Notice served on the tenant. As the Notice directs, "[d]escribe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided."

The purpose of that requirement is so a tenant may determine exactly what months are in question and may produce records countering the landlord's particulars. In this case there is no clear detail of the months in question. The Residential Tenancy Policy Guideline #38 "Repeated Late Payment of Rent" indicates that the late payments must be relatively recent and not far apart. Additionally, in this case there is text evidence that the landlord has acquiesced to late payments, asking the tenant to pay within three days of the first of the month. In March 2020 the landlord asked the tenant to give her most of the rent and the rest they would add on to future rent.

In these circumstances I find that the tenant has not been repeatedly late paying rent within the meaning of s. 47 of the *RTA*.

Extraordinary Damage/Put Landlord's Property at Significant Risk

The "Details of Cause(s) portion of the Notice states:

MISUSE OF DISHWASHER – CAUSE OF FLOOD – OVER 20,000.00 WORTH OF DAMAGE. URINE SMELL + UNSANITARY CONDITIONS CAUSED BY PETS.
UNSANITARY GRIME ON FLOORS
EXCESSIVE DAMAGE TO WALLS + FRIDGE
BROKEN LIGHT FIXTURES
DAMAGED FLOOR TRANSITION STRIP
GARBAGE LEFT OUT IN BACK CAUSING DAMAGE TO FENCE + DECK BY WILDLIFE
EXCESSIVE DAMAGE TO THE DECK
EXCESSIVE DAMAGE TO BLINDS + SOME SCREENS

I have found that it has not been proved that the tenant or her family was the cause of the water damage.

The landlord's photos make it clear that the tenant is keeping an animal that urinates and defecates inside this house. The kitchen subfloor, exposed during water damage repairs, is riddled with urine stains and some feces. A large clump of feces was apparent behind a door. I agree that the staining of the subfloor caused damage and perhaps required some special cleaning or sealing.

Additionally, the photos make it clear that the tenant does little if any housekeeping. The parties argued over the colour of the vinyl flooring. I agree with the tenant that it

was not the colour the landlord insists but, at the same time, a close inspection of the flooring shows that it is grime laden. The photos of the bathroom floor show that it has not felt a mop in a very long time. However, urine and feces droppings and the dirty floor are cleaning matters or minor damage, not in the realm of the “extraordinary damage” required to establish an eviction.

As noted by Sewell J. in *Guevara v. Louie*, 2020 BCSC 380 “A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord.”

There was no evidence about broken light fixtures or a transition strip. In any event neither comes within the term “extraordinary damage” in my view.

It should be pointed out that s. 32(2) of the *RTA* requires that a tenant maintain reasonable, health, cleanliness and safety standards during a tenancy. She has not, but that is not a ground for eviction under this Notice.

The landlord’s photos show that the wall have chipped paint in places and that there is at least one dent in the drywall along the stairs. The refrigerator has a number of small dents in it, compatible with the tenant’s children stabbing it with a broom handle, as referred to in the evidence. This is not “extraordinary damage.” It is however, damage the landlord is entitled to have the tenant repair on clear notice. Failure to do so may well entitled the landlord to proceed under s. 47(1)(b) of the *RTA*.

It should be noted that as with other areas of the home, including the carpeting on the stairs, the fridge requires significant cleaning on its doors.

Not mentioned in the Notice details but apparent from the evidence, the tenant or her children have written what appear to be telephone numbers in pen or other inked instrument on a wall of the home. This is not “extraordinary damage” but it is damage the landlord is entitled to demand the tenant repair under threat of an eviction Notice pursuant to s. 47(1)(h).

The landlord’s evidence shows that the tenant’s garbage cans are full to overflowing. The tenant indicates that such was an unusual circumstance. The landlord’s suggestion that the situation has caused a bear or bears to damage the fence or decking is however, pure speculation. It does not put the landlord’s property at significant risk. The storage shed contains a number of items obviously being stored as well as some black garbage bags which the tenant testifies contain used cans. It does not appear to

be food or organic waste garbage that might attract animals and I find that it does not put the landlord's property at significant risk.

The fencing in places shows a significant scratching away of its finish, particularly on and near the gate. It is light scratching more consonant with a dog than a bear. I very much doubt that a bear has been in this yard and then scratched at the gate to get out. It is also apparent that the fence is of considerable age, the finished lumber is cracked and weathered, even where not scratched. I find this is not "extraordinary damage" nor has the garbage accumulation put the landlord's property at significant risk.

The deck is composed of 2x4 lumber. It is well weather and is disintegrating in places, particularly at its ends. It was originally nailed down. An attempt at reinforcement with screws at various ends has not corrected the out-of-kilter boards. Vegetation can be seen growing up between the 2x4s. Rot has set in. It is not reasonable to conclude the tenant has caused this state of affairs over her three years of tenancy. It is not "extraordinary damage" caused by the tenant.

In result the landlord has not established any of the lawful grounds cited in the Notice for ending this tenancy. The Notice to End Tenancy dated August 12, 2020 is hereby cancelled.

The Tenant's Request for a Compliance Order and Limitation on Landlord Access

Both these requests relate to entries by landlord or her agent. It is alleged that on August 14 and 17 the landlord's agent entered the property without notice through the back gate and yard to attach an evidence package to the tenant's door. It is also alleged that on August 28, the landlord attended at the front door to serve documents. Additionally, there is a suggestion that the landlord attended without notice while her workmen were conducting repairs.

I find that neither a compliance order nor an order limiting the landlord's right of entry are required at this point. Rather, the parties are informed that there is generally an implied permission for any person to walk up to another person's front door and knock or ring the bell, without committing a trespass or violating a tenant's right to exclusive occupation. There is no such right to cross over a back yard for that purpose. It is fenced, gated and is a private area. In the event a landlord give's proper notice or has a tenant's permission for workmen to come onto the property for a particular purpose (like conducting repairs) there is no additional notice required for the landlord herself to attend to monitor the work. However, the landlord is not entitled to go beyond that

purpose and, say, attempt to inspect the home without the tenant's permission or without having given a specific notice to enter for that purpose.

Conclusion

The tenant's application to cancel the one month Notice to End Tenancy is allowed. The Notice is cancelled. The remainder of the tenant's claims are dismissed without leave to re-apply unless based on facts occurring after August 31, 2020, the date of her amendment to her claim.

As the tenant has been successful, she is entitled to recover the \$100.00 filing fee for her application. I authorize her to reduce her next rent due by \$100.00 in full satisfaction of the fee.

It should be noted that given the landlord's claim of repeated late payment of rent in the Notice and given the fact that she issued a ten day Notice on September 2, 2020 for non-payment of September rent (paid by the tenant within five days after receiving that Notice), the landlord no longer agrees to or acquiesces in any late payments of rent.

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 25, 2020

Residential Tenancy Branch