Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancelation of the One Month Notice to End Tenancy for Cause ("Notice to End Tenancy") pursuant to sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to section 72 of the Act.

The hearing was conducted via teleconference. Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant served the dispute resolution package on the Landlord via email on June 11, 2021. The Landlord confirmed receipt of this package.

In accordance with sections 88 and 89 of the Act, I find that both parties were duly served with all the materials.

Issues to be Decided

1. Is the Tenant entitled to have the Notice to End Tenancy cancelled?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision. I explained Rule 7.4 to both parties, that if they wanted me to specifically consider their submitted evidence, it was their obligation to point me to the relevant pages of their evidence packages.

The parties agreed that this periodic tenancy began on March 15, 2016. The monthly rent is $946.00 payable on the fifteenth day of each month. A security deposit of $435.00 was collected at the start of the tenancy and is still held by the Landlord.

The residential property is an old home which contains four individual units, and there is a standalone unit in the back of the property. The Landlord testified that problems with the electrical wiring were noted in the back unit and another unit in the home earlier this year. After having the electricians come out to assess the wiring, the Landlord testified that it was determined that the whole residential property needed a complete rewire including the installation of a new electrical service mast.

The Landlord submitted that one company told her that the wiring was unsafe and the only reason he does not report it to BC Hydro to have the property shut down was because she was actively trying to find someone to fix it. Due to the significant issues brought to her attention, the Landlord committed to get the rewire job completed and testified that she contracted with an electrical company after researching many others.

The Landlord also testified that asbestos assessments were completed at the end of April 2021, and there was no asbestos found. The electrical work began May 5, 2021. The Tenant requested formal written notice for access to her unit as per section 29 of the Act.

On May 7, 2021, after the initial days of work, the Tenant emailed her concerns about a hole that remained open in her daughter's room, and the pieces of 'fiberglass' she found in her suite. The Landlord testified that she informed the Tenant that the type of insulation in the home is not fiberglass but rather green roxul insulation.

Moving forward, the electricians or the Landlord would provide 24-hour notice to the Tenant when access was requested. Because of the nature of the work, sometimes

even after providing notice, the electricians did not need access to the Tenant's unit. The Tenant submitted that she would prepare her unit when the electrician provided notice that access to her unit was needed. The non-appearances of the trades people on days she expected them caused her concern. The Tenant submitted that since receiving the 24-hour notices, she and her daughter have always provided access to the electricians to her unit.

The Landlord testified that other tenants did not require such notices and were more free and easy allowing access to the electricians to do their work. BR, the tenant in the back unit, had major electrical problems. Prior to the electrical work, BR only had two functioning outlets and no lights in the bathroom. Presently, all the electrical outlets and lights are working, but the Landlord testified, there is functional power in the back unit, but not permanent power. They are still running an electrical cord from the basement of the main house to the back unit, and the Landlord stated that, come winter, this will overload the system as the complete electrical reinstall is still not properly completed and the rental property's heat is via electricity.

BR, the Landlord's witness, testified that the Tenant would not allow access to the electricians to her unit. BR said the Tenant was videotaping the workers who came into her suite, and she expected them to show up in her time.

BN, another witness for the Landlord and a tenant in the main house, has a lack of power in some outlets and BN runs an extension cord from the kitchen to other rooms as needed. These issues have been outstanding since June. BN submitted that the Tenant has often refused the electricians access to her unit, and she has blocked access in the driveway, leaving the electrical workers to carry wire and other tools from their trucks parked on the road. Some electrical workers have quit because of her demeaner [*sic*]. BN wrote the Landlord that the Tenant's daughter also does not give contractors access to their suite. BN testified that the refusal of access is often and still on-going.

The Landlord, Tenant and the electrician have communicated via many emails. Both the Landlord and the Tenant submitted such correspondence in their evidence packages. On May 11, 2021, the owner of the electrician company wrote:

Hi [Landlord],

I am writing you this letter on this day May 11, 2021 to inform you that we will not being going back into suite #4 at the [rental property]. Due to the ongoing issues with that tenant, the constant video recording, the emails, and every time we do try and make contact or do work in there is not something I want to expose/risk my staff or company to. The onsite hours that have been wasted due to not working in suite #4 and having to redirect onto different tasks is a waste of money for you and time for me. To break it down for you so far, there are: 8 hours for [worker-B] and 6 hours for [worker-T], over the span of a couple days as well as four hours of my time dealing with going in to the suite and cleaning up after a complaint by the tenant although my worker had cleaned up after himself thus wasting my time, time dealing with you via emails and phone calls about access to the suite. An amount of 18 hours at $80/hr.

I am sorry for having to send this letter to you as this is not your fault, I have delt with difficult customers before but this is far beyond anything I am or my workers are willing to deal with.

Regards,
[Name], Owner, Master Electrician

The Landlord re-negotiated with the electrician to complete the job, but difficulties with access are still a problem. BR, acts as a property manager for emergency issues, as the Landlord lives far away. The Landlord testified that he does have keys for all the rental units, but as the Landlord had an electrician contracted for the job, she was not classifying the work as an emergency, and just wanted cooperation from her tenants. The Landlord submitted she did not want to ask BR to open the Tenant's door to provide access for the electricians to complete the work. The Tenant testified that BR has keys for all the units, and he could have provided access into her unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This matter concerns a One Month Notice to End Tenancy for Cause. The Tenant has applied to cancel this Notice to End Tenancy.

The Landlord served the Tenant with the Notice to End Tenancy in person on May 12, 2021. The Notice to End Tenancy complied in form and content pursuant to section 52 of the Act, and the Landlord submitted a proof of service Residential Tenancy Branch form # 34 as evidence of service. At the hearing, the Tenant confirmed receipt of the Notice to End Tenancy. I find that the Tenant was sufficiently served on May 12, 2021 with the Notice to End Tenancy pursuant to section 71(2)(b) of the Act.

Section 47 of the Act confirms that a landlord may take steps to end a tenancy if the tenant or a person permitted on the rental property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, 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.

The electrical system in a residential property is a major system which is integral to the property, specifically for the tenants' use in their suites.

Pursuant to section 32 of the Act, the Landlord must provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Landlord in this matter was endeavouring to meet this obligation.

Repairs to electrical systems may be considered emergency repairs. Residential Tenancy Policy Guideline 1 specifies that it is the Landlord's responsibility to ensure the residential property meets health, safety, and housing standards.

I find that the electrical system in the Landlord's property needs serious repairs based on the evidence and testimony confirming very spotty functionality in many units of the residential property, and the fact that electricians told the Landlord that they would normally report wiring that was this unsafe to BC Hydro to have the property shut down.

I find the two witnesses who provided independent evidence that the Tenant has caused significant interference with the electrician's work to be credible and reliable. I find that the ongoing denial of access from both the Tenant and her daughter for the electricians to carry out their work has been a significant interference and has unreasonably disturbed the other tenants in the rental property as well as the Landlord. I accept the Landlord's position that with the coming of winter, the electrical system is in serious jeopardy of failing to provide services to all the tenants in the residential property on account of the electrical work not being properly completed. I find there is a significant risk to the Landlord's property as well as the health and safety of the other tenants on the residential property.

The Landlord seeks to end this tenancy for cause, and I uphold the Landlord's Notice to End Tenancy due to the Tenant's significant interference with and the unreasonable disturbance her restrictions have caused in stopping the needed electrical work that must be carried out to bring the whole residential property into safe working order.

I find the Notice to End Tenancy complies in form and content pursuant to section 52 of the Act.

Pursuant to s. 55(1) of the Act, if the tenant makes an application for dispute resolution to dispute the landlord's notice to end tenancy, I must grant to the landlord an order of possession if

> (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlord's Notice to End Tenancy complies with section 52 of the Act, and I dismiss the Tenant's application for dispute resolution without leave to re-apply. I grant an order of possession to the Landlord.

As the Tenant was not successful in her claim, I dismiss her application for recovery of the filing fee.

Conclusion

I uphold the Landlord's Notice to End Tenancy. Pursuant to section 55(1), I grant an Order of Possession to the Landlord effective two days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme 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 1, 2021

Residential Tenancy Branch