Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, LAT, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel notices to end tenancy as well as various orders regarding privacy and landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

The only evidence on file for this hearing was submitted by the tenants. The landlord did not raise any issues related to service and/or receipt of the tenants' evidence. The landlord did not submit any evidence, I address this issue below.

At the outset of the hearing the landlord testified that she was withdrawing all 4 Notices to End Tenancy that the tenants had submitted into evidence. To confirm the landlord had issued the following notices:

- A One Month Notice to End Tenancy for Cause issued on July 31, 2021 with an effective vacancy date of August 31, 2021, citing the tenants or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk;
- A 10 Day Notice to End Tenancy for Unpaid rent or Utilities issued on August 2, 2021 with an effective vacancy date of August 12, 2021 citing the tenants had failed to pay rent in the amount of $2,450.00 due August 1, 2021;
- A One Month Notice to End Tenancy for Cause issued on August 10, 2021 with an effective vacancy date of September 30, 2021, citing the tenants or a person permitted on the property by the tenant has put the landlord's property at significant risk and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- A One Month Notice to End Tenancy for Cause issued on August 17, 2021 with an effective vacancy date of September 30, 2021, citing the tenants or a person permitted on the property by the tenant has significantly interfered with or

> unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the tenants or a person permitted on the property by the tenants has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

I accept the landlord has withdrawn all of these Notices to End Tenancy and as such I order they are no longer of any effect and the tenancy will continue until ended in accordance with the *Residential Tenancy Act (Act)*. As these notices are now cancelled, I also find the portion of the tenants' Application for Dispute Resolution seeking to cancel the notices is now moot and I amend their Application to exclude these issues.

While the tenant's original Application for Dispute Resolution sought only to cancel a single notice to end tenancy; suspend and set conditions on the landlord's right to enter the rental unit; and to have the landlord comply with the *Act*, regulation or tenancy agreement I note they submitted two amendment forms seeking to include cancelling three additional notices and a request for authourization to change the locks on the rental unit.

In addition, the tenants submitted a third amendment form seeking to dispute a rent increase. However, in their description of why they wanted to amend the application they stated that they also wanted to change the terms of their tenancy agreement to no longer be supplied with furniture; internet, utilities and for a carport that they never had access to.

Based on these proposed changes to the tenancy agreement the tenants wanted a reduction in current rent from $2,450.00 to $1,850.00. I also note the tenants submitted a copy of a Notice of Rent Increase issued by the landlord on October 20, 2021 to increase rent by the allowable amount for 2022 based on the current rent.

During the hearing I explained to the tenants that they were not actually disputing an allowable rent increase but seeking to change the terms of the tenancy agreement negotiated by the parties prior to the start of the tenancy. I advised that I have no authourity to assist in a re-negotiation of the terms of their agreement but that if the parties agree to the new terms they can certainly do so, but they may enter into a new tenancy agreement if they both agree to the new terms.

As such, I have not allowed the tenant's third amendment.

As a result of the above I clarified with the parties that we would proceed on the portions of the tenants' Application that included requests for orders to suspend or set conditions on the landlord's right to enter the rental unit; to authourize the tenants to change the locks and to have the landlord comply with the *Act*, regulation, or tenancy agreement.

The landlord submitted that she was led to believe that once she withdrew her notices to end tenancy that the hearing would be over and that we would not proceed on any other matters and since that was her intent she did not submit or serve any documentary evidence on the remaining issues.

The landlord stated she had spoken to a very experienced arbitrator who told her that the hearing would not continue if she had withdrawn her notices to end tenancy. She confirmed that she did not check with any current employee or representative from the Residential Tenancy Branch. She provided the name of the person with whom she spoke. I noted that I was not familiar with anyone of that name working for the Residential Tenancy Branch (RTB) in the last 12 years or how they would have knowledge of current Rules of Procedure or RTB processes.

Residential Tenancy Branch Rule of Procedure 6.2 states the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In the case before me, as the landlord has withdrawn the notices to end tenancy, I have determined that there is no reason to consider applying rule 2.3 as the remaining issues identified on the tenants' Application that I have clarified above would be considered are all related to the issue of the tenants' right to quiet enjoyment.

Residential Tenancy Branch Rule of Procedure 7.9 states that without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

The tenants did not wish to adjourn this hearing. The landlord submitted that she would like to have the hearing adjourned so that she could submit evidence, as she did not believe the hearing would have continued as noted above.

Rule of Procedure 6.6 states 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As the issues related to the notices to end tenancy are no longer being considered in this Application, the entire burden rests with the tenants to provide sufficient evidence to establish their claim.

I have considered the landlord's oral submissions, however, based on the issues identified in the tenants' Application and the fact that the burden in this case rests with the tenants I am not satisfied that adjourning this hearing would result in resolution or be required to provide for a fair opportunity to be heard. The landlord has raised no issues in receiving the tenants' evidence and should be prepared to respond. Again, for these reasons, I see no prejudice against the landlord to proceed.

While I do not find that the landlord took intentional actions that led her to seek the request for adjournment, by failing to contact the RTB or reviewing the Rules of Procedure I do find that the landlord neglected to obtain a clear understanding of what might proceed at a hearing that included issues in addition to the requests to cancel notices to end tenancy.

As a result, I declined to grant an adjournment and the hearing proceeded.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit; authourizing the tenants to change the locks to the rental unit; to comply with Section 28 of the *Act*; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 29, 31, 67, 70, and 72 of the *Act.*

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on August 6, 2020 for a one-year fixed term tenancy beginning on September 1, 2020 that converted to a month-to-month tenancy on September 1, 2021 for a current monthly rent of $2,450.00 due on the 1st of each month with a security deposit of $1,225.00 paid.

The tenants submit that the landlord has installed a security camera that is capable of recording audio as well as video images. The tenants provided that the camera was

originally located above their deck and in between their unit and a neighbouring unit. The tenants became suspicious that the landlord used audio recordings to learn private details of their neighbour, which led to his tenancy being ended.

The tenants also assert the landlord knew information about the female tenant's son in regard to his employment that could only have been learned by the landlord by overhearing conversations that would have been captured as a result of the camera. The tenants also submit that originally there was no signage that video surveillance was underway on the property.

The tenants testified that when they first became aware of the audio capabilities, they put tape over the microphone on the camera and requested the landlord remove the camera and/or disable the audio capture functions.

The landlord testified that the surveillance camera was installed 3 years ago and was done so to ensure security of the multiple dwelling residential property. She stated a number of other occupants of the residential property are happy that it is there, including the audio functions. The landlord provided no documentary evidence or witnesses to provide evidence to confirm her testimony.

The tenants testified that the use of this camera with audio capabilities is contrary to current privacy legislation, but they did not provide which specific privacy legislation, such as BC legislation including the *Freedom of Information and Protection of Privacy Act*; the *Personal Information Protection Act*; or federal legislation.

The tenants also submitted that the installation of the security cameras must be completed by certified technicians as required under a Securities Act. However, the tenants provided no specific legislation confirming this legislative requirement. They also testified that, pursuant to the federal Intercepted Private Communications Act the recording of third-party conversations is punishable by 2 years imprisonment – no copy of this legislation was provided.

The landlord stated that she has investigated the surveillance requirements allowed by the Office of the Information and Privacy Commissioner which states only that she needs to have a surveillance policy and that she is only obligated to share that policy with the tenants if they ask for a copy of it. The landlord did not provide any documentary evidence of the requirements she described. The landlord read portions of her policy into her oral testimony. During the hearing the tenants asked the landlord for a copy of the policy and she agreed to provide it.

The parties agreed that the landlord has moved the security camera to a different location at the far end of the neighbouring rental unit. The tenants, however, remain concerned the landlord is still using the audio recording functions.

The tenants testified that the landlord was unable to assist in determining who stole their catalytic converter, recently, as the camera was pointed in a direction that only allowed a blurred vision of an unidentifiable person – who may or may not have been involved in the theft. They also expressed concerns that the landlord only uses the camera in an attempt to point out issues related to their tenancy and use of the residential property.

The tenants seek to have the landlord remove the existing surveillance camera and have a proper security camera installed by security professionals for the entire property (not just the one camera); that there be a protocol for the storage of recordings; and that the system not include audio recording.

The tenants also testified that the landlord has a habit of entering rental units without adequate notice on the hopes that other occupants are not present in their respective rental units. The tenants submitted that the landlord asked the male tenant to help her clean the glass in a fireplace in a neighbouring unit but that while he was there with her, she told him that she had not informed the occupant that the tenant would be there with her.

The tenants also presented that the landlord had, on March 18, 2021 knocked on their rental unit door to give 30 to 60 minutes notice that she wanted to paint the ceiling that got damaged from a roof leak but that she only plastered the ceiling on that date and then returned on March 25 to paint the ceiling without any prior notice. The tenants also submit that while she was there and the tenants' guests arrived the landlord took a 20 minute conference call during which she "shushed" the tenants and their guests.

The tenants testified that on March 20, 2021 the landlord started showing the residential property with the intention of selling the property. However, the landlord knocked on the door at around 11:00 a.m. came in to cover the tenants' aquaponics system and to lower a picture that was hanging on the wall.

The tenants seek orders restricting the landlord's access to the rental unit.

The tenants submit the landlord has a history of entering other rental units on the residential property without any notification to other occupants. Specifically, the tenants testified the landlord entered into another unit occupied by people who travel for work and she thought were out of town at the time of entry. However, one of the occupants was asleep on the couch.

The landlord testified that she had been asked by the other occupant to check on something in the rental unit but that she was not told that the other occupant was at the rental unit at the time.

The tenants testified that they have no knowledge of the landlord entering their own rental unit without their knowledge.

The tenants submitted a photograph of a notice they have posted on their door that advises the landlord that she is not allowed to enter into the rental unit without the tenant's authourization or until dispute is over with the RTB. The notice goes on to say that "an unathorized entry is being recorded with video & audio. It will be used agaist you in a court of law." [reproduced as written]

Analysis

As noted above, the burden to prove their position in this Application rests with the tenants. In addition, decisions made by arbitrators rely solely on testimony and documentary evidence presented during the hearing. This is of significant importance in this case, specifically in relation to the tenants' submissions related to requirements for surveillance cameras.

In this case, the tenants provided no documentary evidence or specific identification of what they state was applicable law in the use of security surveillance cameras. For example, while the tenants quoted "privacy laws" they did not identify which laws or what sections of those laws were applicable. As such, the decision below is based solely on their submissions; the landlord's responses; and Section 28 of the *Act*.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (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]; and
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

While I recognize that a landlord is also obligated under Section 32 of the *Act* to maintain a residential property in a manner that complies with health and safety standards, I must balance the rights and obligations of both parties.

As noted above, in the absence of any specific evidence from any authouritative source I find the landlord is allowed to use video surveillance equipment. Despite the landlord's assertion that other occupants in the residential property wanted both the video and audio capabilities, I find the landlord has failed to provide any justification as to why audio recordings would be necessary.

As a result, I find that as the camera recording of any and all conversations on the residential property, including those that are not related to any security issues, should not be allowed. I make this finding, in part, because the obligation of the landlord to

ensure the tenants' quiet enjoyment overrides to the need for audio recording of a *potential* security issue.

I make no findings or other orders on the tenants' request to have a security system installed by professional technicians or any other requirements they set forth that are based on their understanding of any legislative requirements that they have not submitted to this hearing for consideration. However, I encourage both parties to research, particularly information provided by the Office of the Information and Privacy Commissioner, on the use of video surveillance as it relates to rental properties.

Section 29(1) of the *Act* states 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;
(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
(d) the landlord has an order of the director authorizing the entry;
(e) the tenant has abandoned the rental unit; or
(f) an emergency exists and the entry is necessary to protect life or property.

Section 29(2) states a landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

In consideration of the requirements set forth is Section 29, I find the tenants have provided insufficient evidence that the landlord has failed to comply with Section 29. With the exception of monthly inspections, the requirement for a 24-hour notice is not always required when a landlord attends a rental unit.

For example, one of the issues raised is that on a couple of occasions the landlord sought entry to repair and/or paint areas of the ceiling. In both cases the tenants provided no evidence that they refused entry to the rental unit when the landlord requested to come in – as such, I find in those cases the requirements of Section 29(1)(a) were met. Specifically, the tenants provided permission for the landlord to enter.

Having said that, due to the nature of the current relationship between the parties, I would recommend that the landlord provide 24-hour written notice for any planned entry to the rental unit, no matter what the purpose, however, I make no order to do so.

I also note that while a landlord is only allowed to enter the rental unit once per month, pursuant to Section 29(2), for the sole purpose of an inspection, the tenants cannot refuse entry to the landlord if permission is granted or if a 24-hour notice is given and the reason for entry is reasonable. I find, however, that a landlord does not have the right to enter a rental unit to cover up a tenant's possessions or to move any article in the rental unit, even if provided by the landlord as part of the tenancy agreement and that entry for that purpose would not be reasonable.

Section 31 of the *Act* states a tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change. In the alternative, Section 31 allows a tenant to change a lock or other means that gives access to his or her rental unit if the landlord agrees in writing to, or the director has ordered, the change.

Section 70 states if satisfied that a landlord is likely to enter a rental unit other than as authourized under section 29, the director, by order, may

> (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
> (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

I am not satisfied, on a balance of probabilities, that the tenants have established that the landlord is likely to enter the rental unit other than as authourized under Section 29. I make this finding, in part, based on the tenants' testimony that they are not aware of the landlord entering their own rental unit without their knowledge. In addition, I find that despite the tenants' submissions regarding statements from other occupants, the tenants have no evidence in the form of written statements or witness testimony confirming their assertions on these points.

As noted above, the only order I make, of those requested by the tenants, is that the landlord not record any audio for the purposes of security surveillance. I dismiss all other portions of the tenants' Application for Dispute Resolution without leave to reapply.

While normally, I would not award the tenants to recover the filing fee for this Application as they have been largely unsuccessful, I will grant them recovery of the filing fee in this instance.

I grant this award as the tenants submitted their Application, largely in response to the Notices to End Tenancy issued by the landlord. Despite the landlord issuing these notices in July and August 2021, the landlord did not withdraw the Notices until the date of this hearing. As such, even though I was not required to adjudicate the issue of the validity of the Notices, the tenants had no choice but to file an Application for Dispute Resolution and pay the filing fee if they wanted the tenancy to continue.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **$100.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a single future rent payment, pursuant to Section 72(2)(a) of the *Act*.

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: December 09, 2021

Residential Tenancy Branch