



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1289671 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of two Tenant's Application for Dispute Resolution, both filed on March 27, 2023, wherein the Tenant D.H. and the Tenant L.H. sought to cancel 2 separate 1 Month Notice to End Tenancy for Cause, issued on November 17, 2022 (the "Notices") issued in relation to their rental units as well as recovery of the filing fee. D.H. and L.H. are married and live in neighbouring rental units, #5 and #6 respectively.

The hearing of the Tenants' Applications was scheduled together for teleconference at 9:30 a.m. on March 27, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both Tenants called in on their own behalf as did their lawyer K.S. The Corporate Landlord was represented by the Directors I.J. and C.. as well as their legal counsel M.G.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenants recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Director, C.J. testified as follows. He confirmed that he is the owner of the rental units which are located in a rental building with nine rental units and a duplex. The rental building was built approximately 110 years ago. He stated that they purchased the property 2-3 years ago.

The reasons the Landlord sought to end the tenancy is that the Tenants cut a hole in the wall between their units creating access between the units. C.J. stated that when he viewed the property prior to purchase, he did not notice the access door. He claimed that he went into the rental unit, it was “very strange” as the Tenants had covered everything with blankets.

C.J. further claimed that he didn’t know that some of the tenants were there for many years and didn’t realize the rents were considered low as he was from Alberta where rents were also low.

C.J. testified that he first became aware of the access door when he was inspecting the electrical in all the units. He says that he was in shock when he saw the access door and says he told the Tenant, D.H., that it was illegal. He stated that he could not remember when he saw the door, but said it was “a long time ago”, approximately two years after he purchased the building. He then stated that as soon as he saw the door he told his wife, and she issued the Notices to both Tenants.

C.J. further testified that at the time he discovered the door, he talked to the Tenant, D.H. and D.H. told him that it was a long time ago that they put the door in.

C.J. further stated that he believed that the door was “totally illegal” because it made 8 units not 9. He also claimed that the Tenants were “hiding it”.

In terms of the date the inspection occurred, Counsel for the Landlord directed my attention emails from March of 2022 wherein the Landlord informed the Tenants that the inspection would occur at that time.

On April 4, 2022 I.J. sent the D.H. an email directing the Tenant to remove the door.

Also introduced in evidence was an email from the previous owner’s representative, J.L. dated December 1, 2022 wherein he wrote as follows:

To whom it may concern,

Please let this email letter confirm that the door opening/pass through between the suites #5 and #6 was present before our family took ownership in 2004. The tenants have been long term tenants prior to us taking ownership and the opening was done with permission from the previous owners before us.

It was promised verbally by the tenants that the opening would be replaced prior to the tenants moving out.

In response to the Landlord’s testimony and submissions the Tenant, D.H. responded as follows. He testified that he moved into the subject rental unit in the early 2000’s. He confirmed that he has lived in the building since 1989.

D.H. further confirmed that he cut the hole in the wall approximately 20 years ago to make a door between his unit and the neighbouring unit, which was occupied by his wife, L.H. He stated that at the time L.H. asked for and received permission from the Landlord to create an access door. He could not recall if they had anything in writing from the previous landlord permitting the wall to be opened up but they did have verbal permission. He stated that they needed to be connected as they had a small child at the time and they wanted to make sure their son could safely pass between their homes. He noted that their child is now 26 years old and is currently living back with D.H.

D.H. also stated that the Landlords have been in the unit 3 times and have never requested that the door be removed. He also claimed it was never concealed. He stated that the first inspection was in February of 2021; the new owners measured the square footage in August 27, 2021 and did a further inspection in March of 2022.

D.H. also claimed that the letter in April 2022 was the first time the Landlord asked them to fix the wall.

D.H. estimated that the door opening could be closed up in an afternoon, although the mudding and painting would take a couple of days. He confirmed there are no electrical wires where the door is.

L.H. also testified. She stated that she has lived in the building since 1982 and in unit #6 since 1989. She stated that the original landlords, the "W's" were her friends. She claimed that she wanted an access door so they could co-parent as she and D.H. were not yet married at the time they had their son and were living next door to one another. She said that the deal with the W's was that they could have the access door as long as they rebuilt it before either of them moved out.

L.H. also confirmed that they had the wall checked before cutting it and that D.H. is a handyman and measured the wall to check where the studs were.

L.H. stated that it was never an issue with any of their previous Landlords. She stated that she believes this is just another way the Landlord is trying to get rid of low paying tenants. L.H. denied trying to conceal the door, although she admitted that they did cover their personal possessions. She said the building had been for sale for 8-10 years and the realtors had posted photos of these units online such that they felt their right to privacy was infringed.

In terms of when they first talked about the door, L.H. testified that was August 27, 2021 when the Landlord's son had come into the unit to measure the suite. He went through the door and they talked to him about it.

In cross examination L.H. confirmed that she did not contact the W's as both of them had passed away. She also stated that their son who was not capable of taking care of the building as he is under the care of the Public Guardian and Trustee.

Analysis

The Landlord seeks to end these tenancies for Cause pursuant to section 47(d)(ii), (f) and (g) of the *Act*, which reads as follows.

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d)the tenant or a person permitted on the residential property by the tenant has

...

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

...

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

...

The circumstances giving rise to the Notice relate to the access door created by the Tenants at some point in time, prior to 2004. At that time the Tenants had a child together and wished to have safe access for their young son to pass between his parent's neighbouring rental units. The Tenants both testified that they had permission to create the door from the Landlord at the time. Documentary evidence also supports a finding that the previous owners/landlords were aware of the access door and that the Tenants were simply expected to replace the wall and remove the door in the event either tenancy ended.

The Landlord alleges the Tenants concealed this door from them when they viewed the property prior to purchase. In support they provided photos of the rental unit showing blankets covering their possessions. L.H. testified that the rental property was for sale for a significant period of time and the sellers and their agents used photos of the units in advertising in such a way as to negatively affect the tenants sense of privacy. I accept her testimony in this respect. Additionally, C.J. confirmed that he did not thoroughly inspect the property prior to purchase as he was most concerned with price.

I find it more likely he simply did not notice the access door rather than it being concealed by the Tenants.

I also accept the Tenants' testimony that they agreed to remove the access door and replace the wall in the event either of their tenancies ends.

In all the circumstances, I find the Landlord has failed to prove these tenancies should end for the reasons cited in the Notice. I am not satisfied the Tenants have seriously jeopardized the health or safety or lawful right or interest of the Landlord or another occupant. While currently the two rental units are technically, one unit, when the wall is replaced the units will be separated again and the Landlord will have the same number of units he expected when purchasing the property. As well, I am not satisfied, based on the evidence before me, that this access door puts anyone's health or safety at risk. Had there been any issues at the time the passageway was created, that time has long since passed.

Additionally, I am not satisfied the creation of this access door constitutes *extraordinary damage*, as I accept the Tenants' testimony that they had permission to create this door and did so with due consideration of the wall structure and presence of electrical wires. This alteration is not damage in the normal sense of the word.

While the evidence confirms the Landlord asked the Tenants to remove the door and replace the wall in the spring of 2002, I am not satisfied this was a reasonable request as the Tenants have had this passageway for nearly 20 years.

Arguably it would be a different outcome had the Tenants, without the Landlord's knowledge or consent, recently cut a hole in the wall creating a passage way to their neighbours. However, in this case I find the Tenants sought permission from their landlord back when the wall was cut open and have had this passage way for at least 19 years. In the circumstances I find the Landlord does not have cause to end these

tenancies. The Notices are cancelled and the tenancies shall continue until ended in accordance with the *Act*.

As the Tenants have been successful in their Application they are both entitled to recover the filing fee. They may reduce their next month's rent by \$100.00 each as recovery of this sum.

Conclusion

The Applications are granted. Both Notices are cancelled. The Tenants may recover the \$100.00 filing fee by reducing their next months' rent accordingly.

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: April 17, 2023

Residential Tenancy Branch