

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** FF, LRE, MNDC

## **Introduction**

This matter dealt with an application by the tenant for a monetary order for loss and for compensation as well as an order to limit the landlord's right to enter. The tenant also seeks to recover the filing fee for the cost of this application.

Both the tenant and the landlord appeared at the hearing, which was held via teleconference. I advised both parties that I would consider their testimony as well as their written documentation which had been submitted prior to the hearing.

## **Issue(s) to be Decided**

Is the tenant entitled to an order to limit the landlord's entry into the rental unit?

Is the tenant entitled to a monetary order, and if so in what amount?

## **Background and Evidence**

Both parties have submitted extensive written documentation, and for the most part, there is very little variance in the versions of events, other than the interpretations by each side.

The basic agreed to facts are as follows:

- the tenant has a disability, namely that she is legally blind and requires the use of an assistive device to scan correspondence and read it to her. This device only works if the correspondence is typewritten.
- the tenant and the landlord have had numerous items of correspondence between each other over the years.
- in September 2008, there was an issue over the repair of the sink in the tenant's bathroom.
- a letter was sent from the tenant to the landlord (following other previous ones on the same subject) on September 9, 2008 asking the landlord to repair the sink and requests that the landlord call her by Friday to set up a time to replace the sink
- the tenants letter also states that if the work is not done by Friday that she will "yank" it out
- on Friday, September 12, 2008 the tenant arrived home to find her door unlocked and upon entering heard a male voice. The tenant was unable to determine who the person was, screamed, causing the male to leave. The tenant then called the police.
- It was later determined that the male was a B.C. Housing employee who had entered the rental unit to repair the sink
- the tenant on September 17, 2008 returned home and found items in her bathroom, namely a water bottle and a roll of tape on the vanity.

The evidence of the tenant is that when she returned home on the 12<sup>th</sup>, that she was terrified at finding someone in her home and not knowing who it was. The experience has left her feeling insecure in the rental unit, as even though it was the landlord's employee there had been no prior notice given to the tenant that there would be someone in her home.

The tenant also believes that it must have been a landlord employee who entered her unit on the 17<sup>th</sup> as well, as there was no sign of forced entry and the landlord's employees are the only ones with key access. Subsequent to this alleged entry, the tenant discovered that \$70.00 in cash was missing from her rental unit. The tenant seeks to be reimbursed for the missing cash, to have a metal gate installed in her hallway and for a chiropractic fee.

The evidence of the landlord is that no notice to enter was utilized for the sink repair as they viewed the tenant's letter as granting permission to enter. The landlord also states that due to the tenant's threat to "yank" out the sink that they viewed it as an emergency. The landlord states that on September 12, 2008 they left a voice mail for the tenant at 11: 45 am and entered the unit at 1:00 pm. The tenant was not home and returned later to find a person in her home. The landlord gave evidence that the B.C. Housing employee identified himself verbally to the tenant when she screamed and that he wears a uniform.

The landlord denies that any B.C. Housing employee entered the rental unit on September 17<sup>th</sup> and as such they could not have taken the tenant's money. The landlord states keys are only in the possession of B.C. Housing employees.

### **Analysis**

In reviewing the evidence before me, I find that the tenant has on numerous occasions requested that the landlord correspond with her only in a typewritten format so that her assistive device can then read the text to her. This would include all correspondence as well as any written notices to enter the premises.

I find that the landlord's entry into the rental unit on September 12, 2008 did not comply with the requirements of s.29 of the *Residential Tenancy Act*. The landlord failed to give any written notice, and I find nothing in the tenant's letter on September to grant tacit approval to enter. I further find that although the repair may have indeed been a "priority", there was nothing to constitute an "emergency". Although the tenant made a

threat to “yank” out the sink there is no indication that she would not have shut off the water first.

I also find that the landlord does not appear to appreciate the impact on any person who arrives home to find their door unlocked and a person in their home. The landlord's comments that the employee was in uniform does little by way of mitigation when the tenant is blind. The experience would have indeed been terrifying. I find that the tenant is entitled to be compensated for the illegal entry by the landlord's employee and for the fear that it has caused her.

I further find that someone did indeed enter the tenant's unit on September 17, 2008, but I am unable to determine who that was. The logical conclusion based upon the availability of keys and the items left behind would be that it was an employee, but I find that the burden of proof has not been to the required standard.

The tenant wishes to restrict the landlord's right to enter the unit based upon these recent experiences and I find that her concerns are genuine. The landlord has been aware of the tenant's disability for years and has been advised by the tenant that she requires typed notices.

The posting of a notice on the door as has been the landlord's practice is not sufficient when a person has a disability such as blindness. The person would not know the notice was there and would in most cases be unable to read its contents.

## **Conclusion**

In summary I find that there is insufficient evidence to determine who may have committed the alleged theft of the tenant's money on or about September 17, 2008 and I dismiss that portion of the claim.

I also dismiss the tenant's claim for reimbursement for a chiropractic fee, as there has been no medical evidence submitted to establish the claim.

In regards to the landlord's right to enter the tenant's rental unit, I order as follows:

- the landlord must at all times comply with the entry provisions of the *Residential Tenancy Act* and in addition
- the landlord must give the tenant the required notice to enter, in an entirely typewritten format so that it can be read by the assistive device
- the landlord must serve any notice to enter by either presenting it in person to the tenant or by posting it on the door.
- if the notice is posted on the door, the landlord must immediately attempt to contact the tenant via telephone and if contact is made, to advise the tenant that a notice has been posted and to read the contents of the notice to the tenant.
- if the tenant can not be contacted via telephone, the landlord may comply by leaving a voice message with the same details as stated above.
- that if emergency access is required and the tenant is not in the rental unit, that the landlord will post someone at the tenants door to forewarn her that an employee is in her home
- if the landlord does enter for an emergency purpose and the tenant is not home, that the tenant be notified via a voice mail that the landlord was required to enter for an emergency

In regards to the request for a metal gate, I find such a measure to be excessive. I am also reluctant to order a change of locks due to the requirement for the landlord to have emergency access. I must however consider that the tenant has a right to feel safe and secure within the rental unit and that her disability must be accommodated. I order that the landlord is to install an auxiliary locking device such as safety chain or similar device so that the tenant will be able to utilize it only when she is in the unit. This must be completed with 14 days of receipt of my decision and the costs borne by the landlord.

I find that the failure of landlord to comply with the legislation on at least one occasion and that the aftermath of that failure is significant and I order that the tenant be compensated in the amount of \$250.00. In the event the second alleged illegal incident had been proven, I would have had no hesitation to increase that amount significantly.

I further order that the tenant is entitled to recover the filing fee of \$50.00.

The tenant is entitled to deduct the amount of \$300.00 from future rental payments to satisfy the monetary award.

Dated: December 12, 2008