

DECISION

Dispute Codes OLC, LRE, O

Introduction

This hearing dealt with the tenant's application for Orders for the landlord for compliance with the Act, regulations or tenancy agreement; authorization to set conditions on the landlord's right to enter the rental unit; and, other issues. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Is it necessary to issue Orders for compliance to the landlord?
2. Is it necessary to set conditions upon the landlord's right to enter the rental unit?

Background and Evidence

I heard undisputed testimony that the tenant has been residing at the residential property for approximately 15 years. The landlord is a housing society. The rental unit is one of a few in the residential property designed to accommodate persons with mobility issues; however, the remainder of the residential property was designed and constructed in accordance with standard building practices.

The tenant identified four main issues during the hearing.

1. The first issue is that the manager illegally entered the rental unit in early January 2010. The tenant described how the manager used a key to enter the unit after knocking and the tenant stating "just a minute".

The manager stated she attended the unit to respond to an issue raised by the tenant and thought she heard the tenant say "come in". The manager claimed that she profusely apologized to the tenant upon learning of this misunderstanding. The landlord explained that since this incident the landlord has implemented a new policy whereby managers may not enter a unit even if they hear a tenant say come in. Rather, the manager must wait for the tenant to open the door and invite the manager in. If the tenant does not respond to a knock at the door the manager is to post a Notice to Enter on the door.

The tenant acknowledged that since this one incident no subsequent incidents have occurred.

2. The second issue raised by the tenant related to the rent review meeting that took place in the common room with the manager. The tenant explained that when the manager showed up for the meeting the manager did not greet the tenant and when the meeting concluded the manager left the room and closed the door behind her. The tenant had a very difficult time opening the heavy metal door and getting herself and her scooter out of the common room. The tenant felt the manager treated her rudely and cruelly.

The manager stated that when the manager entered the common room the tenant was already in the room and the door was closed. The tenant did not request the manager hold the door open for the tenant when the meeting concluded. The manager was unaware that the tenant required her assistance to leave the common room. The manager explained that she has no malice towards the tenant and was preoccupied with other issues requiring her attention.

The landlord further submitted that the residents are to be able to function independently and that the door to the common room is an ordinary solid door with an automatic closer. Ordinarily there is a door stop in the common room. The tenant submitted that there was not a door stop in the room during that meeting.

3. The tenant alleged that the landlord has not posted an emergency contact number. The tenant submitted that the phone number posted by the landlord is the phone number for the office and that when the manager is not on duty there is nobody to answer the phone in the case of emergencies.

The landlord explained that they only have funding for a manager to be on duty part time (8 am to 1 pm Monday to Friday) and that an answering machine will record messages if a tenant calls outside of those times. The messages are retrieved the following morning except Saturday and Sunday. If there is an emergency a tenant should call 911 and if an urgent plumbing issue arises the tenant may contact a plumber and recover the cost from the landlord where appropriate. The landlord also explained that the tenant has the phone number of the president of the housing society that she has called before.

The tenant raised the issue of not having funds to pay for a plumber if an emergency arose.

4. The tenant stated that there is a lack of respect from the manager. I did not hear specific details with respect to this issue as respect is not something provided for in the Act, regulations or tenancy agreement and I cannot order one party to provide such. However, the parties were encouraged to treat each other respectfully and with mutual understanding in order to foster a successful tenancy.

Analysis

As explained to the parties during the hearing, my authority to resolve disputes between a landlord and tenant is limited to the terms of a tenancy agreement and provisions of the Act and its regulations.

I have considered all of the evidence before me and I make the following findings with respect to the first three issues raised by the tenant.

1. Section 29 of the Act provides for a landlord's restricted right to enter a rental unit which I provide here as reference for both parties.

Landlord's right to enter rental unit restricted

29 (1) 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;

(f) an emergency exists and the entry is necessary to protect life or property.

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

[my emphasis added]

In this case there is no dispute that the manager entered the rental unit on a particular day in early January 2010. At issue was whether the tenant gave permission to the manager to enter the unit at the time of entry. Both parties allege a different version of events. In the absence of any witnesses, and finding both parties credible, it is nearly impossible to determine which version occurred. However, I am satisfied that the landlord has implemented a new policy so that any misunderstanding is very unlikely to occur in the future. I find the landlord's response to the tenant's complaint to be sufficient and I do not find it necessary to issue any further order upon the landlord.

2. It is not in dispute that the manager closed or permitted the door to the common room to close upon the completion of the rent review meeting with the tenant. Section 28 of the Act provides for the tenant's right to quiet enjoyment of the residential property, including freedom from unreasonable disturbance and use of the residential property free from significant interference. Section 30 of the Act provides for a tenant's right of access to residential property. Residential property includes common areas. Section 32 of the Act provides that a landlord must maintain a residential property. I have provided the relevant provisions of these three sections for the parties' reference.

Protection of tenant's right to quiet enjoyment

28 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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property,

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I do not find sufficient evidence that having a door with an automatic closer violates any building law. Rather, I find it likely the solid door with a closer was installed due to building laws. Therefore, I do not find the landlord violated section 32 of the Act.

Although the manager did not greet the tenant upon entering the common room I do not find this amounted to unreasonable disturbance or significant interference of the tenant's right to use and enjoy the common areas. While courtesy is often

appreciated it is not something I can order; however, it is encouraged with a view to a successful tenancy in the future.

Finally, I found the manager had a reasonable expectation the tenant did not require assistance to exit the common room as the tenant was already in the common room when the manager arrived and the tenant did not ask for assistance leaving the common room. Therefore, I do not find the landlord unreasonably restricted access to the tenant.

In light of the above, I do not find a violation with respect to this issue on part of the landlord and I do not make any Order to the landlord.

3. Section 33(2) provides that a landlord “must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.” In this case the landlord has posted a telephone number outside of the office on the property. The tenants have been notified that this telephone number is the number to call for emergency repairs.

At issue in this case is that a call to this telephone number often leads to an answering machine and messages may not be checked for some time, especially if an emergency occurs over a weekend. Section 33 of the Act provides for emergency repairs and the actions a tenant may take in the event the landlord does not respond to after two telephone calls are placed to the telephone number provide by the landlord.

Section 33 has been reproduced here for the parties' reference.

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

[my emphasis added]

The tenant acknowledged having the telephone number for the landlord's office. I am satisfied the landlord has either posted the telephone number or given it to the tenant in writing.

By way of section 33, the Act contemplates and provides for the situations where an emergency repair exists and the landlord does not respond to a tenant's call for assistance. I cannot change the way the Act is written and I do not impose different requirements upon the parties. Rather, I encourage the tenant to familiarize herself with the definition of an emergency repair and if an emergency repair arises the tenant may take the appropriate action in accordance with section 33 of the Act.

The Act is silent as to a tenant's inability to afford emergency repairs at the time of the repair. However, I am satisfied the landlord addressed this issue with this particular tenant by providing the tenant with the home telephone number of the board president with the understanding that she may call this number in the case of an emergency repair.

In light of the above, I do not find it necessary to issue any orders upon the landlord as I do not find the landlord violated section 33(2) of the Act.

In summary, I find there may have been one incident of unauthorized entry by the manager but I am satisfied that the landlord has taken sufficient steps to ensure such an occurrence does not happen again. The parties have been informed of their rights and obligations under the Act with respect to entering a unit, a tenant's right to quiet enjoyment, maintaining the residential property and emergency repairs but I do not find a violation of these provisions by the landlord. Accordingly, I do not issue any Orders upon the landlord or set any additional conditions upon the landlord's right to enter the rental unit.

In an effort to resolve this dispute, the tenant has been provided the opportunity to voice concerns and issues to the landlord and the landlord has had an opportunity to voice the landlord's position. I am satisfied that with an effort by both parties to move forward with mutual respect and understanding towards each other a successful tenancy may be enjoyed by both parties.

Conclusion

I found there may have been one incident of unauthorized entry by the landlord; however, I was satisfied the landlord has taken steps to ensure this does not happen again. I do not find any other violation of the Act, regulations or tenancy agreement by the landlord. I do not make any Orders upon the landlord with this application.

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: June 15, 2010.

Dispute Resolution Officer