



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, LAT, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order authorizing the tenant to change the locks to the rental unit; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application. The tenant attended the conference call hearing and gave affirmed evidence. An agent for the landlord also attended the hearing, gave affirmed testimony and called a witness, being the caretaker of the building. The parties were also given the opportunity to cross examine each other on their evidence. All evidence has been reviewed and is considered in this Decision.

Issues(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order authorizing the tenant to change the locks to the rental unit?
- Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy began on April 1, 2000 in this particular unit, however, the tenant testified that he resided in another unit within the building commencing August, 1996. The tenant still resides in the rental unit.

Rent in the amount of \$538.00 is payable in advance on the 1st day of each month, and there are no rental arrears.

The tenant testified that he has been given numerous notices from the landlord to enter the tenant's suite; some of which are not legal. Copies of the notices were provided in advance of the hearing. The first notice was received on August 30, 2010 and it states that the landlord will be entering the suite on August 2, 2010 for "zone valve replacement" and contains no time of entry. The tenant found the notice posted to the door of his suite. The tenant copied it and took the copy to the landlord stating that it was invalid. The next day the tenant found another notice posted to his door that stated the address of the rental unit and that "zone valve replacement in your unit will be done on Sept 1, 2010," but no time was indicated again, and he subsequently told the landlord that he was not given 24 hours notice, and therefore, the landlord had no legal right to enter the rental unit. The tenant received another notice on August 31, 2010 at 7:00 p.m. with identical wording as the last notice, with a date of entry of Sept 2, 2010.

On September 3, 2010 the tenant received another notice which states that the landlord would be entering the unit on "Tuesday 8 September 7, 2010 8:00 AM – 6:00 PM." That notice indicated that the landlord would be inspecting the heating system. The tenant testified that the notice was unclear as to the date the inspection was to take place, and that the landlord had offered himself a 10 hour window on whichever date the notice referred to.

The tenant received another notice on September 10, 2010 which states that the landlord would be entering the unit with a plumber to complete repairs to the building heating system on "TUESDAY/WEDNESDAY/THURDAY/FRIDAY, SEPTEMBER

14/15/16/17, 2010 8:00 AM – 6:00 PM,” again allowing the landlord a 10 hour window per day for 4 days.

The tenant spoke to the plumber and they arranged September 15, 2010 to do the heating system repairs, but the plumber didn't show. The tenant called him, and he replied that he wouldn't be back that week. The tenant had to move furniture, an air conditioning unit and a stereo out of the way for the tradesperson, and moved it all back once he learned the plumber wouldn't be returning that week.

The tenant received another notice on September 20, 2010 which states that the landlord and plumber would be accessing the unit on, “TUESDAY/WEDNESDAY/THURSDAY/FRIDAY, SEPTEMBER 20 – 24, 2010 8:00 AM – 6:00 PM.” The tenant further testified that September 20 was a Monday, not a Tuesday and the landlord was offering himself another 10 hour window per day for another 4 days (or 5) to enter the unit.

The tenant also provided a video of the landlord's caretaker and a woman entering his unit when he was not at home on June 1, 2010. The video shows the 2 people standing in the hallway of the building, assumingly waiting for someone to answer the door. The male enters the unit, then the female. The tenant also testified that he has video cameras and electronic equipment sophisticated enough that the system sends him an email when movement is detected in his unit. The tenant received the email and was then able to observe who was in the residence. He recognized the male person as the landlord's caretaker and phoned him on his cell phone asking why he was in the unit. The male person responded that he was looking for a leak and did not mention the woman that was with him. When asked later that day about the woman, the caretaker stated that he was showing her where bedbugs typically go. The tenant testified that the audio of the video clearly has the voice of the male person asking the female person whether or not she thought the wires in the unit were safe; they did not talk about a leak or bedbugs. Further, the caretaker walked to the balcony, looked out the window and can be seen in the video pointing to wires.

The landlord also went into the tenant's unit when an unknown teenage male told him that he was concerned that the tenant might be dead. The landlord did not know this person and had no reason to believe the tenant was dead.

On another occasion, the tenant stated that he witnessed the caretaker enter another suite and asked the tenant to go along with his untrue story that he had seen smoke under the door. The tenant did not see smoke under the door of that unit.

The tenant also testified that cigarettes had gone missing from his unit, but no other thefts were evident. He stated that he wants to be home when someone enters his suite and had to take 4 half-days off work; valves had to be replaced twice and the heat needed repairs, but it shouldn't take 5 trips to do the job. The tenant is claiming 2 of those half days at \$50.00 per day.

The landlord's agent testified that the notices that were not valid were not acted upon, and all entries into the unit were justified. He further stated that he was entitled to put in the notices a range of dates and times.

The landlord's caretaker testified that he entered the unit on June 2, 2010 due to an emergency. He further testified that there was a leak in a unit above, and took a female advocate with him to act as a witness to the event and to ensure he wasn't accused of stealing anything from the unit. When asked if the female person was a plumber or an electrician, the caretaker responded that she is not, nor is he, and confirmed that he did not ask her about a leak.

Analysis

Firstly, I must point out to the landlord that entry into a rental unit is contrary to the *Act*. Further, the landlord cannot give himself a 5 day window for 10 hours each of those days in a single notice to enter a rental unit. *The Residential Tenancy Act* states:

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 time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I find that the landlord has misinterpreted the legislation to allow entry of the unit on a notice that does not give the date and time of the entry. The landlord cannot enter at any time between 8 a.m. and 9 p.m.; the notice must say which day and at what time the landlord intends to enter the unit.

With respect to the entry by the caretaker on June 1, 2010, I find that the entry may have been necessary to protect life or property. However, I also find that the landlord's caretaker had no reason to invite the female advocate into the tenant's unit. I agree with the tenant that she was not a plumber or an electrician, and therefore the caretaker's reasoning and conflicting reasons for doing so are not justified. The video is clear; they were not looking for bedbugs, he looked out the balcony window and he simply wanted her opinion on whether or not she felt the tenant's wiring in the unit was safe, and she had no credentials to offer such an opinion.

Further, I do not find that the landlord had any reason to believe the tenant was dead when the unknown male indicated that he might be. I heard no evidence as to why the caretaker may have believed the tenant was dead. Whether or not the male was a friend of the tenant does not justify entry.

I also find that the landlord sent numerous notices to the tenant in order to enter the rental unit which caused the tenant to miss work because he wanted to be present when someone was in his unit. The tenant is entitled to quiet enjoyment, and that includes being home when his unit is entered if he so desires.

In the circumstances, I find that the tenant's application is justified.

Conclusion

For the reasons set out above, I hereby order that the tenant be permitted to change the locks to the rental unit.

The tenant will receive rent abatement in the amount of \$100.00. The tenant is also entitled to recovery of the \$50.00 filing fee, and I order that the tenant deduct the amount of \$150.00 from the next month's rent.

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 26, 2010.

Dispute Resolution Officer