



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC, RP, LRE, LAT, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord make repairs; to change the locks and to set conditions on the landlord's right to enter the rental unit.

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

Prior to the hearing the landlord's doctor had provided a letter indicating that attending the hearing would be so stressful to the landlord it would put her health at significant risk. The landlord attended the hearing and prior to start of the hearing I queried the landlord on her ability to participate in this hearing. She noted that although her doctor did not want her to proceed she felt she could.

I advised the landlord that should she not be able to go on at any point that she should identify this and we would decide what to do at that point. Approximately 40 minutes into the hearing the landlord indicated that she was getting too upset to continue and she hung up from the call.

By this time, all matters had been discussed, except for the tenant's application for an order to change the locks on the rental unit.

The landlord also stated at the start of the hearing that she was withdrawing her 1 Month Notice to End Tenancy for Cause, as such there was no reason to discuss that matter and the tenant's application was amended to exclude the matter of the notice to end tenancy.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord make repairs to the rental unit; suspend or set conditions on the landlord's right to enter the rental unit; authorize the tenant to change the locks to the rental unit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 29, 31, 32, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenancy began in July 2010 for a month to month tenancy for a monthly rent amount of \$650.00 due on the 1st of each month, a security deposit of \$325.00 was paid.

The tenant seeks to have the landlord repair her daughter's bedroom resulting from leaking plumbing in the ceiling of the bedroom. The landlord testified this work is currently underway and the tenant confirmed this. The tenant also seeks to have smoke alarms installed and to have the thermostat connected to the furnace.

The landlord testified that she has provided the tenant with smoke alarms but that she will have them installed by the same people who are completing the work on the daughter's bedroom.

The landlord testified that she had to disconnect the thermostat that the tenants had connected the furnace to because it caused the furnace to run all night, which she states is not good for the furnace. The tenant noted that the thermostat that they connected to the furnace is in fact a non-programmable thermostat and that replaced the programmable thermostat that had previously been located in the rental unit.

As to the landlord's entry into the rental unit the tenant contends the landlord is entering the rental unit without her permission on many occasions. The landlord asserts that she has only ever entered the unit with the tenant's permission or when there was an emergency.

On one occasion the landlord entered because she believed the sewer pipe was flooding the laundry room and on the other occasion the furnace was running all night, so the landlord entered and cut the wires to the thermostat that the tenant had installed.

The tenant contends they had arranged to meet the landlord to look at the sewer pipe but that the landlord just didn't wait. The tenant states they were completely aware of the problem and had modified their behaviour to avoid flooding by, for example, not using the kitchen sink until such time as it was repaired.

The landlord provided in her written submission that she entered the rental unit on the 10th or 11th because the furnace was running constantly and at that time she cut the wires to the thermostat.

Analysis

I accept the repair work on the daughter's bedroom is near completion and see no reason to provide an order in regard to this repair. However, should the landlord fail to complete this repair within a reasonable time the tenant is at liberty to seek compensation.

Section 32 of the *Act* requires a landlord to maintain a residential property in a state of repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While neither party provided any evidence regarding any applicable laws, I accept the rental unit, based on the location, should be equipped with smoke detectors and the furnace and thermostat should be connected and in proper working order.

I note in the landlord's written submission that she states she has only been in the rental unit on two occasions; once to investigate problems with the fridge, stove and washing machine and once to investigate problems with flooding of the washing machine, and had the tenants' permission.

The landlord goes on to state that she also entered the unit to investigate flooding in the utility room despite having set an appointment with the tenant to look at it together. She also noted that she later that day "stuck my head out of the door between the suites" to tell them the good news that it would be an easy fix.

The landlord acknowledges that she also entered the rental unit utility room to see why the furnace was constantly running and in so doing found the thermostat to be reconnected and so she cut the wires to the thermostat.

The landlord asserts that these times were emergencies and she was therefore within her rights to enter the rental unit without the tenant's permission. I do not accept that the furnace constantly running was an emergency. I could see it as an emergency should the furnace *not* be working and the weather extremely cold but I am not convinced that the furnace running constitutes an emergency.

In the matter of the potential flooding, while the tenant suggested that they had modified their behaviour and were not using the kitchen sink so they knew there would be no more flooding in the utility room, I am not satisfied that the landlord was aware of this and accept that she felt there may have been an emergency need.

I also note that, despite the landlord's intentions to report what she saw as good news to the tenants, Section 29 requires the landlord to provide the tenant with at least 24 hours notice before entering the rental unit and "sticking" one's head into the door constitutes entering the rental unit. A phone call would have been sufficient to provide the tenants with the update.

I accept that the landlord has entered the rental unit on occasions without the tenant's permission and set the following conditions on the landlord's right to enter the rental unit:

1. The landlord cannot enter the rental unit by just knocking on the door and proceeding into the unit;

2. If the landlord intends to enter the rental unit the landlord must provide written notice to the tenants to enter the rental unit at any time and include the purpose for entry, which must be reasonable;
3. The written notice must be served on the tenants in accordance with Section 88 of the *Act*:
 - (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
 - (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
 - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
 - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (j) by any other means of service prescribed in the regulations;
4. When served in accordance with Section 88 the notice is deemed received in accordance with Section 90:
 - (a) if given or served by mail, on the 5th day after it is mailed;
 - (b) if given or served by fax, on the 3rd day after it is faxed;
 - (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
 - (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left;
5. In the event of an emergency that requires entry to protect life or property, the landlord is allowed to enter the rental unit but must report this entry to the tenant and the reasons for it, in writing, as soon as practically possible.

I am not satisfied that the landlord has entered the tenants' rental unit with sufficient frequency or for purposes other than attending to ensuring she is maintaining the rental unit to warrant allowing the tenants to change the locks on the rental unit. I find that the restrictions on the landlord's access should provide sufficient guidance to the landlord on how and when she can enter the rental unit.

Conclusion

For the reasons noted above, I order the landlord to have the smoke detectors installed and have the thermostat reconnected to the furnace and made operational.

I also order the landlord to follow the conditions noted above when entry to the rental unit is required.

As per the above, I dismiss the tenants' application to change the locks on the rental unit, however, I do authorize the tenants to install or have installed, at their own expense, interior door chain locks for at least two of the doors to secure the doors from the interior of the rental unit.

As the tenants were only partially successful in their application, I dismiss their application to recover the filing fees for this hearing.

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: November 22, 2010.

Dispute Resolution Officer