

Decision

Dispute Codes: LRE

Introduction

This hearing dealt with an application by the tenants for an order suspending or setting conditions on the landlords' right to enter the rental unit. Both parties were represented in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenants are entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from March 10, 2010 to March 10, 2011. Thereafter, tenancy continues on a month-to-month basis. Monthly rent is \$1,550.00, and a security deposit of \$1,000.00 was collected. An overview of the circumstances giving rise to this dispute is set out below.

The subject unit is a strata property. In September 2010 the property manager was informed by the developer about a leak in the ceiling of the unit located below the subject unit. It was determined that the leak was "from a punctured line in the in-floor heating system" of the subject unit. In order to complete the necessary repairs, it was determined that the tenants would be required to vacate the subject unit for a period of up to three weeks, and perhaps longer. Following from this, efforts were made to reach an agreement with the tenants. As no agreement was achieved, the property manager informed the landlords / owners of the circumstances. The various parties were then involved in a variety of different communications, all in aid of determining when / if the tenants could be relocated from the unit while repairs were completed, where the tenants might be accommodated during this time, and what compensation, if any, they may be entitled to as a result of the disruption to the tenancy. In short, the foregoing communications did not lead to a potential outcome agreeable to all parties. The tenants considered that during all of these communications there had been unauthorized access to the unit by certain parties. This in turn led to the tenants' present application.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution. However, these efforts did not lead to a settlement. Matters discussed included, but were not necessarily

limited to, whether there has been unauthorized access to the unit in relation to making assessments around the repairs required, whether or not the unit must be vacant in order for the repairs to be completed, how long the repairs are likely to take, what storage can be made available for some of their possessions while the tenants are on vacation (February 21 to 25), what alternate accommodation might be suitable for the tenants during the repairs, whether larger accommodation may be made available during a visit by the tenants' family members (March 15 to 25 and possibly several days beyond), and what amount of compensation may be appropriate.

Analysis

The landlords' preferred outcome is to gain access to the unit as soon as possible in order to complete the necessary repairs.

The tenants' preferred outcome is to delay the commencement of repairs until after March 25, 2011, which is when their currently scheduled vacation in February, and the anticipated visit from family members in March, will both have been completed.

In addition to the above, both parties hope to achieve consensus around the nature of alternate accommodation during repairs, and the amount of any compensation.

Once again, what I have before me is limited to an application by the tenants for an order suspending or setting conditions on the landlord's right to enter the rental unit. I do not have before me an application by the tenants for a monetary order, nor do I have an application by the landlords for an order instructing the tenants to temporarily vacate the unit, and simultaneously authorizing entry to the unit by the landlord for the purpose of completing repairs during specific times / dates. The parties have the option to file such applications in the event they continue to be unable to resolve between them the matters in dispute.

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/ Below, I draw the attention of the parties to the immediately relevant provisions of the Act.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(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*];

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, in part as follows:

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;
- (d) the landlord has an order of the director authorizing the entry;
- (f) an emergency exists and the entry is necessary to protect life or property.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part:

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, ...

Section 33 of the Act addresses **Emergency repairs**, and provides in part as follows:

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.

Following from all of the above, having now had the benefit of discussing various aspects of the dispute during the hearing, the parties are encouraged to continue to try to resolve the outstanding matters between them. As previously stated, should agreement not be reached, the parties have the option of filing applications for dispute resolution, the nature of which have been described above.

Conclusion

In the meantime, I hereby order the landlords to comply with all the relevant statutory provisions concerning access to the subject unit.

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*.

DATE: February 10, 2011

Residential Tenancy Branch