



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, LAT, FF

Introduction

This matter dealt with an application by the Tenants for an Order that the Landlord comply with the Act, for an Order restricting the Landlord (or its agents) from entering the rental unit, for an Order permitting the Tenants to change the locks on the rental unit and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord's agent confirmed that the name of the corporate Landlord was incorrect and as a result, the style of cause is amended to reflect the proper name. At the beginning of the hearing, the Landlord's agent also admitted that he received a Canada Post notice card advising him to pick up a registered mail package (containing the Tenants' hearing package) however he did not do so. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if the recipient fails or refuses to pick up the mail). Given that the Landlord acknowledged receiving notice of the Tenants' registered mail, I find that he was served with their hearing package as required by s. 89 of the Act.

The Tenants filed written submissions on December 2, 2011 in which they sought compensation for various things, however the Tenants' application did not include a claim for compensation. The Tenants sought to amend their application to include a monetary claim at the beginning of the hearing, however, given that the Landlord has had no notice of this claim, I did not allow their application and they will have to file a new application for that relief.

Issue(s) to be Decided

1. Are the Tenants entitled to an Order restricting or setting limits on the Landlord's right to enter the rental unit?
2. Are the Tenants entitled to an Order permitting them to change the locks on the rental unit and to prohibit the Landlord from obtaining a key to gain entry?

Background and Evidence

This tenancy started on July 15, 2011. Rent is \$1,500.00 per month payable in advance on the 1st day of each month. The rental unit is a house that was formerly owned by the female Tenant's grandparents. The owner and agent of the corporate Landlord is W.D. who resides two houses away from the rental unit on the same street.

The Tenants claim that when they viewed the rental property prior to taking possession of it W.D. was in the process of doing renovations on the master bedroom en-suite bathroom. The Tenants said W.D. told them that the renovations would be completed no later than August 1, 2011 but that if they wanted to move in earlier he would try to have them done by July 15, 2011. The Tenants said when they moved in, the renovations were not done and W.D. had left many tools and materials lying around in the master bedroom so that they did not have the use of that room. The Tenants said W.D. compensated them for their loss of use of the rental unit for the first 2 weeks of the tenancy but by August the master bedroom was still uninhabitable. The Tenants said W.D. would not agree to compensate them for their loss of use of the rental unit for this period. The Tenants provided photographs of the rental unit they said they took at the beginning of the tenancy that show the state of the master bedroom and en-suite bathroom at this time.

The Tenants said they had a family gathering on July 23, 2011 and were surprised that W.D. invited himself and acted in such a manner as he was entitled to be there. The Tenants claimed for example, that when their guests left, W.D. advised them that they were welcome to come back any time. The Tenants said W.D. came to the rental unit almost on a daily basis thereafter. The Tenants said they became concerned when they noticed that W.D. was starting new renovation projects rather than finishing the ones he had started. For example, the Tenants said rather than complete the en-suite bathroom renovations, on August 19, 2011, W.D. decided to put up eaves troughs and to dig a trench for underground drainage. The Tenants said W.D. left an open trench which was near an exit for a period of about a week which they felt was dangerous and as a result, the male Tenant (R.D.) completed this work.

The Tenants said on August 19, 2011 they had a barbeque with the female Tenant's (C.S.) sons and W.D. again showed up uninvited. The Tenants said W.D. had to be escorted from the rental property by C.S.'s sons. The Tenants said they really started to have concerns about W.D.'s behaviour around the end of September 2011. On September 25, 2011, R.D. left early in the morning to travel to his job in northern B.C. C.S. said she found W.D., sitting on her deck at 3:00 a.m. in the morning. When she asked him what he was doing there, he responded that he wanted to take photos of R.D. leaving. C.S. said she went back inside but W.D. did not leave until 6:00 a.m.

On September 26, 2011, C.S. said she got a telephone message from W.D. saying that he wanted to do some things to the rental unit. C.S. said she returned to the rental unit at lunch time and W.D. showed up 5 minutes later advising her again that he wanted to

do some things to the rental unit. C.S. said she received another telephone message from W.D. later in the day on September 26, 2011 wanting to know why she was not returning his messages and inquiring if she would be home for supper. C.S. said W.D. called her yet again that evening and questioned her about her plans. C.S. said she spoke to W.D. at this time and as she was going to be away for work the following day for approximately a week, she agreed to W.D. doing the work because he assured her it would be done by the time she returned and one of her sons agreed to stay there. C.S. said that when she returned to the rental unit at 8:00 p.m., W.D. was asleep in his car in her driveway.

C.S. said W.D.'s behaviour concerned her so she contacted her spouse, R.D. C.S. said she also went to her son's house and returned with him and his friend who asked W.D. to leave. C.S. said when she went to the porch, she noticed that a number of items had been moved and as a result, she said she believed W.D. had been hanging around the rental property waiting for her. C.S. said that she blocked W.D.'s number on her cell phone. On September 27, 2011, she found more calls had been made from a blocked number but no messages were left. C.S. said when she left for work that morning, she found a note on her windshield from W.D. which stated "just wanting you to get there safely, enjoy yourself, and get home safe...C U next Wkend. W" As a result of these things, C.S. said she filed an incident report with the RCMP.

C.S. said when she returned to the rental unit on September 30, 2011 her son advised her that W.D. had been doing some work with a contractor but that while the contractor left at 5 p.m. each day, W.D. would remain until midnight or later. C.S. said her son also advised her that he asked W.D. to remove his tools before she returned but he did not do so but left them sitting by the carport. Consequently, C.S. said her son removed the items and left them in W.D.'s driveway. C.S. said later that evening, W.D. arrived at the rental unit very intoxicated and when she saw him she went inside and contacted the RCMP. C.S. said W.D. went onto the patio, started drinking her drink, walked into the rental unit to use the bathroom and then into the master bedroom. C.S. said her son then told W.D. to go home and the RCMP later took W.D. to the "drunk tank."

After these incidents, C.S. said she put door guards on the interior doors to prevent W.D. from entering unannounced and a lock on the exterior gate to prevent W.D. from using the patio. C.S. said she also cancelled her home telephone because she did not need it and because W.D. was constantly calling it. C.S. said on October 7, 2011 while sitting out on her patio, she could see W.D. watching the house and deck. On October 11, 2011, C.S. said she discovered that some items from the carport had been added and others removed. C.S. said when she came back from lunch that day she also noticed that the deadbolt was unlocked and the door guard had been pushed away. C.S. said this led her to believe that W.D. had attempted to enter the rental unit because he was the only other person with a key.

C.S. said she received a call from W.D. later in the day on October 11, 2011 and he said that he wanted to discuss doing more work which included blowing out the irrigation lines, finishing the en-suite bathroom and installing exhaust fans in all of the

bathrooms. C.S. said she advised W.D. that she did not want him there unless someone else was home and therefore she suggested that he wait until October 20, 2011 when R.D. would be home.

C.S. said she did not document any events from October 14 – November 2, 2011 because she was dealing with the declining health and later death of her grandfather. C.S. said she did recall, however that on a few occasions, she placed a piece of string by a door ledge as a way to determine if anyone was entering without her knowledge and on at least one occasion, she found the string missing. On November 2, 2011, C.S. said her friend, L.L. brought her home and at that time she found dirty blankets and debris on her bed that W.D. had left there. Consequently, C.S. said L.L. called W.D. and asked him not to do anymore work. C.S. said W.D. called 5 days later wanting to return to the rental unit to do more work so she agreed he could come the following day provided that he left at 5 p.m. when she returned from work. C.S. said when she returned from work at 6 p.m., W.D. was still there and although she asked him to leave, he said he had more work to do and asked if he could buy her some beer. C.S. said she could no longer deal with W.D. so she called her friend, L.L., who came to the rental unit and told W.D. to leave.

The Tenants said W.D. did more work from November 15 – 19, 2011 with a contractor. At that time, R.D. was at the rental unit and on November 17, 2011 he gave W.D. a letter and discussed it with him. In particular, the Tenants said they advised W.D. that it was unacceptable to them that his renovation projects were ongoing, disorganized and still not completed. The Tenants also advised W.D. that they were upset with him leaving tools and materials lying around the rental unit.

C.S. said she returned to the rental unit at 6:00 p.m. on November 23, 2011 and found that W.D. had put the door guard on so she could not get into the house. C.S. said she was upset so she called R.D. who then called W.D. and he opened the door. C.S. said she found W.D.'s behaviour "unnerving" so she got her dog, left and called the RCMP. C.S. claimed the RCMP advised W.D. to stay away from the rental unit (which W.D. denied). C.S. said W.D. still continued to call her claiming that he wanted to do some repairs. C.S. said she told W.D. that she did not want him making any more repairs and the following day she filed an application for dispute resolution (in this matter).

The Tenants' friend and witness, L.L. corroborated C.S.'s version of the events of November 2, 7, and 23, 2011. The Tenants' son and witness, D.S., corroborated C.S.'s version of events of September 26 and 30, 2011. D.S. also gave evidence that on November 24, 2011 W.D. showed up unannounced at the rental property with his contractor and began removing things from the carport. D.S. said he advised W.D. and his contractor that they should leave or he would contact the RCMP. D.S. also gave corroborating evidence about W.D. leaving tools and materials around the rental unit.

The Tenants argued that although they have told W.D. that his presence in their home is no longer welcome and that they will no longer accommodate ongoing, disruptive renovations, he has failed or refused to acknowledge their wishes.

W.D. denied that he told the Tenants that renovations would be completed by August 1, 2011. W.D. also denied that the master bedroom en-suite bathroom renovations had started as of the date the Tenants took possession of the rental unit. W.D. said that he always had the Tenants' verbal authorization to do work at the rental property which was the reason for his numerous calls to the Tenants. W.D. said he had only ever entered the rental unit on one occasion without the Tenants' knowledge and consent and that was to drop materials off in the basement because no one was home and he could not leave them outside. W.D. denied leaving tools and materials lying around the rental unit and said it was his practice to store these things in a room not used by the Tenants.

W.D. said the renovations are necessary to improve the interior living space of the rental unit which he claimed was 35 years old. W.D. argued that if his renovations appeared not to have been completed in a timely manner, it was because he often had to rely on his contractor who had many other obligations and who therefore was not always available. W.D. admitted that the renovations had taken longer than he had expected but he claimed that there were some unforeseen events that he had to deal with such as having to re-order materials, level a bathroom floor, deal with a dropped ceiling in the basement bathroom and so forth. Consequently, W.D. argued that the Tenants did not appreciate the amount of work he had done and the constraints with which he had to work.

W.D. said he could not recall being invited to the Tenants' family gatherings in July and August 2011 but he said he believed he had established a "social" relationship with the Tenants because they did not tell him to leave their gatherings. W.D. claimed that the Tenants invited him to have dinner with them July 24, 2011 however the Tenants denied this event ever took place. W.D. also claimed that he attended the rental unit for reasons other than repairs in an attempt to console C.S. who appeared distraught over the illness of her grandfather and he believed she needed someone to talk to. D.W. said he believed this because on one occasion, C.S. spoke to him for ½ of an hour about her concerns.

W.D. said it was never his intention to inconvenience or upset the Tenants by his presence at the rental unit. W.D. said he wants to complete the current renovations by finishing the wiring of the basement washroom exhaust fan and by venting the en-suite bathroom fan to the roof and he estimated this would take 6 hours (however his contractor, D.C., claimed it would take 8 hours). D.W. claimed that he also needed to replace the water filter for the rental unit and clean the air ducts and upstairs carpets. D.W. proposed that the later two projects would be contracted out. D.W. also proposed that he would do no further renovations without the written consent of the Tenants and that no workers or materials would remain on the rental property after 5:00 p.m.

W.D.'s contractor, D.C., also gave evidence at the hearing on behalf of the Landlord. He corroborated W.D.'s evidence that he was not always available in August and September 2011 to assist with renovations due to other commitments. D.C. also

claimed that it was not always possible to give reliable time estimates for renovations to the rental unit due to unforeseen issues but he admitted that W.D. never asked for a time estimate. D.C. admitted that part of the delay with the rental unit renovations had to do with the type of materials used by W.D. which he would not have chosen.

Analysis

Section 70 of the Act says as follows:

- “(1) The director, by order, may suspend or set conditions on a landlord’s right to enter a rental unit under s. 29;
- (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under s. 29, the director, by order may
 - (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
 - (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.”

The Tenants argued that the renovation projects undertaken by W.D. were not necessary because the rental property was in relatively good condition. The Tenants claimed that the W.D. seems to have fixated on these unnecessary projects and ignored more important repairs such as, for example, an unstable railing on the patio. The Tenants said W.D.’s projects also ended up being disorganized and unreasonably prolonged and noted that the master bedroom en-suite bathroom renovations started in July 2011 have still not been completed. The Tenants said W.D.’s constant presence in the rental unit doing renovations and leaving tools and materials lying around have significantly interfered with their use and enjoyment of the rental unit.

The Tenants also argued that W.D. has not respected their privacy by inviting himself to their social gatherings, and on other occasions arriving at the rental unit unannounced and refusing to leave. The Tenants further claim that the W.D. has entered the rental unit and property without their consent. The Tenants argued that W.D.’s unwanted presence at the rental unit and other behaviours toward C.S. escalated when R.D. left to work out of town. Consequently, the Tenants said they want to change the locks for C.S.’s safety.

W.D. claimed that the renovations were necessary but that for reasons beyond his control they have taken longer than he anticipated. W.D. denied entering the rental unit without the Tenants’ consent (with the exception of one occasion).

I accept the Tenants’ -documented occurrences of W.D. being at the rental property and find that W.D.’s constant presence is unreasonable. Although W.D. argued that he had

the Tenants' consent to do the renovations, I find that the Tenants' consent was initially obtained because they wanted to accommodate D.W. and D.W. gave them time estimates that were not accurate. I find that as early as late-September 2011 the Tenants expressed their concerns to W.D. and that by mid-November 2011 the Tenants made it eminently clear to W.D. that they are no longer willing to accommodate his ongoing renovations but that W.D. has failed or refused to accommodate their wishes.

I accept W.D.'s evidence that part of the delay in completing the renovations was due to unforeseen obstacles and the availability of his professional contractor. However, I also accept the Tenants' evidence that for the most part, W.D.'s renovations have been unreasonably prolonged for other reasons. For example, W.D. denied that the renovations to the en-suite bathroom commenced in August, 2011 but instead claimed that they occurred between September and October 2011. W.D. claimed that this renovation took a long time because it was "specialized work" involving the installation of a new shower unit, pedestal sink, toilet and upgrading the plumbing. D.W. claimed that the renovations are still not complete because he had to "special order" an exhaust fan which he only did in late-October.

The Tenants' photographs taken on July 15, 2011 clearly show that the en-suite bathroom fixtures had been removed and placed in the master bedroom. Furthermore, W.D.'s contractor gave evidence that the renovations to the en-suite bathroom started prior to the Tenants taking possession of the rental unit in mid-July 2011. Although W.D.'s witness admitted that there was some delay because a shower stall was damaged and had to be re-ordered and the floor levelled, I find that there is no other evidence that would suggest the work to the en-suite bathroom was "specialized" or should take an extraordinary amount of time to complete. W.D.'s witness further claimed that he believed some of the renovation jobs in the rental unit would have been completed faster had W.D. done things differently like use other materials. W.D. admitted that he waited until late-October 2011 to order the exhaust fans.

I find that W.D. has taken an unreasonable amount of time to complete the renovations to the master bedroom en-suite bathroom given that they commenced prior to July 15, 2011 and remain incomplete to date. Based on the Tenants' photographs and witness evidence, I also find that during the course of his renovations, D.W. has left equipment and materials lying around the rental unit.

I accept W.D.'s evidence that he attended the Tenant's social gatherings because he initially believed he had a "social relationship" with the Tenants. However, I find that as of September 30, 2011, when the Tenants called the RCMP on him, W.D. should reasonably have concluded that his presence on the rental property was no longer welcome. Furthermore, I find that this should also have been apparent to W.D. when he was informed by C.S. on October 11, 2011 that he was not welcome to work in the rental unit unless someone else was home. Instead, W.D. continued to call the Tenants repeatedly to gain access to the rental unit to do repairs and on November 8, 2011 ignored C.S.'s request that he leave the rental unit at 5:00 p.m. as he had agreed to do. Furthermore, I find despite the Tenants' conversation with W.D. on November 17, 2011

when they made it clear they were fed up with the ongoing renovations, C.S. returned to the rental unit on November 23, 2011 to find that W.D. had locked her out of her own residence. In summary, I conclude that W.D. has shown complete lack of insight or disregard for the Tenants' right to the use and enjoyment of the rental unit and for this reason I conclude that his right to enter the rental unit should be restricted.

W.D. admitted and I find that there currently is no need for new repairs but that the existing renovations need to be completed which involves wiring the basement bathroom exhaust fan and to venting the master bedroom en-suite bathroom exhaust fan. W.D. also admitted that he must rely on his contractor to do this work. W.D. also claimed that he needs to change a water filter however I find that this is not a matter that requires his presence at the rental unit. Consequently, I conclude that there is no need at the present time for W.D. to attend the rental unit to complete any further repairs. As a result, ***I order pursuant to s. 70(1) of the Act that W.D.'s right to enter the rental unit under s. 29 of the Act during this tenancy is hereby suspended pending further Order of the director or written agreement of the parties.***

I further Order that W.D. may make arrangements with the Tenants to have his contractor attend the rental unit to complete the installation of the exhaust fans and must provide the Tenants with a written Notice under s. 29 of the Act of the dates and times this entry will occur. W.D. may also make arrangements with the Tenants to have other contractors or agents attend to maintenance issues at the rental property provided that he has the prior written consent of the Tenants and has provided them with a written Notice under s. 29 of the Act of the dates and times these entries will occur. W.D. expressed his concern at the hearing that he should have access to the rental unit in the event of an emergency. However, I find that this is not necessary given that any authorized emergency personnel may gain speedy access to the rental unit by breaking in a door or window if necessary. W.D. also expressed his concern at the hearing that he would need access to the rental unit to collect rent however I find that there are many other ways in which W.D. can arrange for the Tenants to have their rent paid to him.

The Tenants also sought an Order permitting them to change the locks as they claimed that they had returned to the rental unit on some occasions and found W.D. there without their consent. The Tenants also claimed that they believed W.D. had entered the rental unit on a number of occasions when they had not been home. W.D. admitted to entering the rental unit on only one occasion without the Tenants' consent.

While I find that there is evidence that W.D. was sitting on the Tenants' patio on September 25, 2011, I find no evidence that he was advised that he was not welcome to do so or asked to leave. I also find that there is evidence that the W.D. was sitting in his car in the driveway on the rental property on September 26, 2011 and was told to leave however I find that this act was not an entry into the *rental unit*. I find that W.D. did enter the rental unit on September 30, 2011 with the Tenants' knowledge but without their consent and was accordingly asked to leave and did so. The Tenants also claimed that on other occasions, they found W.D. in the rental property when he did not

have their consent to be there. The Tenants claimed for example that on November 8 and 23, 2011, W.D. was there when C.S. returned from work. However, I find that W.D. did have the Tenants' consent to be there on those days although he was supposed to leave at 5:00 p.m. The Tenants also claimed that on another occasion they found a deadbolt and lock guard ajar which led them to believe W.D. had attempted to enter without their consent.

I find that there is sufficient evidence to conclude that W.D. has entered the rental unit without the Tenants' consent on two occasions. On one of those occasions, I find that W.D. left when he was asked to do so. However, I find that there is insufficient evidence to conclude that W.D. has entered *the rental unit* on any other occasions without the Tenants' consent. Given that W.D.'s right to enter the rental unit is at present suspended, there is no reason for him to be in the rental unit from this point forward and I find that there is insufficient evidence to conclude that W.D. has any reason to or is likely to enter the rental unit again without the Tenants' consent. As a result, the Tenants' application for an Order to change the locks is dismissed. However, the Tenants may reapply for this relief should they find any evidence of further unauthorized entries into the rental unit by W.D.

Conclusion

The Tenants' application is granted in part on the above-noted terms. As the Tenants have been largely successful in this matter, they are entitled pursuant to s. 72(1) of the Act to recover from the Landlord the \$50.00 filing fee they paid for this proceeding and I order pursuant to s. 72(2) of the Act that they may deduct this amount from their next rent payment when it is due and payable.

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: January 05, 2012.

Residential Tenancy Branch