



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order authorizing the tenant to change the locks to the rental unit and to recover the filing fee from the landlord for the cost of this application.

An agent for the landlord company and the tenant both attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant's application to change the locks to the rental unit justified?

Background and Evidence

This month-to-month tenancy began in December, 2002 and the tenant still resides in the rental unit. Currently, rent in the amount of \$1,250.00 per month is payable in advance on the first day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$490.00 which is still held in trust by the landlord.

The tenant testified that on February 23, 2012 the tenant was in the shower when the tenant's friend, who was also in the rental unit at the time, advised the tenant that someone was at the door. The tenant, wrapped in a towel, heard keys in the door lock and observed the landlord's resident manager and a repair person open the door and walk in. The tenant asked what they were doing there, and the repair person showed the tenant a non-essential part for completing repairs to the tenant's washer. The tenant asked them to leave and they did. The tenant stated that it was traumatic and caused the tenant to feel very violated. The tenant also felt bad for the tenant's guest. There was no emergency and the landlord's employees had no need to enter the rental unit.

The tenant further testified that the repair person had been at the rental unit the day before to repair the tenant's washer and stated that a new agitator was required and would be delivered the following day, but the resident manager was told specifically not to enter the rental unit when the tenant was not at home.

The tenant also testified that evidence provided by the landlord includes a statement from the landlord's agent and property manager that states that the tenant's friend ought to have answered the door, but the tenant's friend has no obligation to do so; the landlord has an obligation to follow the *Residential Tenancy Act*, and when they don't, they must be stripped of the ability to breach again. The tenant further testified that the landlord has thousands of tenancies; it's a big Canadian company that has breached the *Act* in several cases, although the tenant did not elaborate.

The tenant further testified that the statement of the landlord's agent and property manager states that the resident manager and the repair person thought no one was at home. The tenant stated that is all the more reason to have not entered the rental unit. The statement of the landlord's resident manager also says that the resident manager texted the tenant, but the tenant testified that the text message was not received. The tenant had no idea they were coming, and the tenant has to protect the right to privacy.

When asked if the tenant told the resident manager and repair person to return to finish the repair, the tenant replied that the tenant did not have that discussion with them.

When asked how the landlord would be able to enter the rental unit in the case of an emergency or if a smoke alarm sounds when the tenant is not home if the locks were changed, the tenant stated that the landlord could remove the door within about 5 minutes. Further, the tenant has been in the rental unit for almost 10 years and no emergency has ever existed.

The tenant applies for an order permitting the tenant to change the locks to the rental unit.

The landlord's agent testified to being a property manager for the landlord company. The agent stated that the tenant has lived in the building for a long time and was a weekend resident manager at one time.

The landlord's agent also testified that the resident manager who went into the tenant's rental unit was a friend of the tenant and was only doing his job. This is not an uncommon occurrence; when repairs are required, almost no one refuses. If the landlord had to give 24 hours written notice for every repair, it would be impossible. The

repair person had been at the rental unit the day before, and an agitator was required in order to complete the repairs, and the agitator was an essential part to complete the repairs. The repair person did not have one with him and the tenant knew the repair person would be returning the following day. The resident manager did nothing wrong, and the landlord's agent stated several times during the hearing that she does not understand why we're here at this hearing today. The tenant's application is unreasonable. Further, the statement provided by the property manager and agent for the landlord prior to the hearing states: "We do not understand why (the tenant) has filed this complaint. We have done nothing wrong. We have acted entirely in good faith, doing our best to fulfill our obligations as a landlord. In any case, we do not agree that (the tenant) should have sole possession of the suite key, since we must have access to every suite in case of an emergency. We do not believe that (the tenant) is being reasonable and we therefore ask that this case be dismissed."

During cross examination, the landlord's agent was asked if the agent believes that the *Residential Tenancy Act* is not important if a friendly relationship exists between a resident manager and a tenant. The landlord's agent replied that that is not the belief, but the resident manager had asked if he could return with the part and the tenant had agreed. When asked whether or not a repair person is actually required to install an agitator in a washer, or if it easily pops on, the landlord's agent was not sure. When asked if the landlord's agent is aware that written notice to a tenant to enter a rental unit requires the date and time, the landlord's agent replied that it was not a requirement and asked the tenant to point out where that's written. The landlord's agent was not aware that the resident manager was told not to enter the rental unit when the tenant was not at home.

The resident manager who entered the rental unit was not called to testify, but provided a statement outlining the sequence of events and stating that he was not available for this scheduled hearing. The resident manager has known the tenant for years, the tenant knew they were coming, and the resident manager wanted to help the tenant ASAP.

Analysis

I accept the statement of the resident manager, and the testimony of the landlord's agent, that the tenant knew the repair person would be returning to complete repairs to the tenant's washer. Whether or not the tenant knew which date the repair person would be returning is not clear. However, I cannot overlook the testimony of the tenant

that the resident manager was specifically told not to enter the tenant's rental unit if the tenant was not at home and the tenant testified that the tenant had no idea they were arriving.

Most concerning is the testimony of the landlord's agent that entering a suite to effect repairs is not uncommon, and that the landlord's agent, a property manager, does not know what the *Residential Tenancy Act* states about a tenant's right to privacy and the landlord's entry into a rental unit. The *Act* specifically states 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;
- (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).

In this case, I find that paragraphs (1) (a), (c), (d), (e), or (f) do not apply. The tenant did not give the landlord's resident manager permission at the time of entry and I cannot find that the tenant gave permission at any time before the entry. The tenant testified that the resident manager was specifically told not to enter the rental unit if the tenant was not at home. The landlord's agent stated that the tenant knew and agreed, but the landlord's agent was not there and has no first-hand knowledge of the conversation that took place between the resident manager and the tenant. Further testimony heard is that the tenant had no idea when they were arriving, and in fact denies telling them to return to finish the repair.

It should also be noted that the *Act* does not state that the landlord has to give 24 hours written notice, but states that the landlord has to give *at least* 24 hours and not more

than 30 days written notice, and that notice must state the purpose for entering and the date and time of the entry. The resident manager ought to have asked the repair person to wait until contact was made with the tenant, or asked the repair person to come back another day after arrangements could be made with the tenant. I accept the testimony of the landlord's agent that it would be difficult to do so; repair persons are not always available at specific times, but the landlord does have an obligation to make those arrangements either with the repair person or with the tenant in advance.

The tenant testified that the object of this hearing is to protect the tenant's right to privacy, and the landlord has an obligation to follow the *Act*, and when it is not followed, the landlord must be stripped of the ability to breach the *Act* again. The tenant also testified that the experience was traumatic, and caused the tenant to feel very violated. The landlord's agent did not dispute the testimony of the tenant that if an emergency existed, it would only take about 5 minutes to remove the door to the rental unit, and therefore, I find that the tenant is entitled to change the locks to the rental unit. I further order that the lock(s) be changed at the expense of the tenant, and at the end of the tenancy, the tenant must provide the landlord's agents with all of the keys to those locks or return the locks to the original locks that the landlord's agents have keys for, also at the tenant's expense.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I order that the tenant be permitted to deduct that amount from a future month's rent payable to the landlord.

Conclusion

For the reasons set out above, I hereby authorize the tenant to change the lock(s) to the rental unit at the tenant's expense, and that the tenant return the lock(s) to the original lock(s) that the landlord's agents have keys for at the tenant's expense, or provide the landlord's agents with all keys to the new lock(s).

I further order that the tenant be permitted to deduct the amount of \$50.00 from a future month's rent payable to the landlord.

This order is final and binding on the parties and may be enforced.

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: March 14, 2012.

Residential Tenancy Branch