



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants' application for an Order for the landlord to comply with the Residential Tenancy Act, regulation or tenancy agreement, other issues and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

Both parties agree that this tenancy originally started on November 06, 2010. Rent for this unit is \$2,000.00 per month and is due on the first day of each month in advance.

The tenants testify that the landlord has unlawfully entered their home on two occasions. The tenants' testify that the landlord entered their home on January 28, 2012. The tenants testify that they did not receive a 24 hour Notice of entry from the landlord but found that the landlord had been in their home when she brought prospective tenants to view the home. The tenants testify when they got home they found someone had been in the house and had moved packing boxes, laundry and had sprayed deodorizer in the house due to a smell from an old car bed which had urine on it from a previous family cat that had not come to this rental unit.

The tenants' testify the landlord later notified the tenants that their home smelt of cat urine. The tenant states she responded to the landlords concerns and explained that the old cat bed had been packed in a box in error.

The tenants' testify that they agreed the landlord could come to view the house on February 05, 2012 but then the landlord posted a Notice of entry on January 30, 2012 to enter the house between 8.40 and 9.40 am on February 03, 2012 to review concerns with pet urine odour and concerns with the screens and balcony with the landlords contractor. The tenant testifies that she did not get this Notice of entry and only found out the landlord intended to enter after the tenant spoke with the landlord's contractor on February 02, 2012.

The tenant testifies that she stayed at home on February 03, 2012 and when the landlord arrived the landlord attempted to push on the door when the tenant would not allow the landlord to enter. The RCMP was called and the landlord argued with the RCMP officer concerning her rights. The tenant testifies that the landlord had posted this Notice of Entry in the mail box which the tenant did not find on January 30, 2012.

The tenant testifies that they have had ongoing concerns with the landlord throughout their tenancy. The male landlord works for long periods overseas and the female tenant and their daughter are in the house alone. The landlord has continually disturbed their right to quiet enjoyment of the rental unit and has caused trouble for the tenants'

daughter when she set up a babysitting and dog sitting business in the community. The tenants state that they are moving from the rental unit on March 18, 2012 but seek an Order for the landlord to comply with the *Act* with regard to entry into their rental unit. The tenants request that the landlord leaves them alone for the remainder of their tenancy unless there is an emergency at the rental unit.

The landlord testifies that she had provided the tenants with written Notice of entry for the entry into the rental unit on January 28, 2012. The landlord testifies that this 24 hour notice was left on the tenants' doorstep on January 24, 2012. The landlord testifies that while she was leaving the Notice a Canadian Post office worker also left a delivery Notice and placed this on top of the landlords' letter containing her Notice to the tenants.

The landlord testifies that she did have to change the arrangements made for the February 05, 2012 entry as she realized it was her son's birthday on that day. The landlord testifies she then served the tenants with a Notice of entry on January 30, 2012 effective for February 03, 2012 and testifies that she gave the tenants the date and time of entry and a valid reason to enter the rental unit. The landlord testifies she placed one copy in the tenants' mailbox and one on the door step.

Both parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this. The parties have another hearing scheduled for later in the month and no oral evidence was considered which pertained to this other hearing.

Analysis

The tenants seek an Order for the landlord to comply with the *Act*, regulations or tenancy agreement concerning unlawful entry to the tenants' rental unit. I have considered the arguments put forth by the parties and the documentary evidence. From this evidence it is my decision that the landlord has not acted unlawfully in entering the tenants' rental unit. I find the landlord did post a Notice of entry on January 24, 2012 effective for January 28, 2012 and the landlord did enter on this date as allowed under s. 29(1)(b) of the *Act* which states

(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:

(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;

The tenants argue that they did not receive this Notice however I find from the landlord evidence that it is likely that this notice was left on the tenants doorstep and the landlord did what was required under the *Act*.

I further find the landlord and tenant had agreed on the date of February 05, 2012 and later the landlord had to change this date but again did post a Notice in the tenants' mailbox for which the landlord provided a witness statement. As this Notice was deemed served three days after it was posted the landlords entry on February 03, 2012 was not unlawful.

I would however caution the landlord that she is not entitled to move or disturb any of the tenants' belongings when she enters the tenants unit unless the removal or disturbance of the tenants' belongings is required for an emergency repair.

I also caution the landlord that between now and the date the tenants vacate the rental unit that any entry must be lawful in compliance with S. 29 of the *Act* and must be for a valid purpose.

As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 08, 2012.

Residential Tenancy Branch