



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, LAT

Introduction

This matter concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and permission to change the locks on the unit. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this month-to-month tenancy which began on July 1, 2012. While the landlord claims that monthly rent is \$550.00, two receipts issued for payment of rent for July and August which are in evidence, appear to support the tenant's claim that rent is \$475.00. No security deposit was collected.

There are two doors available for accessing the unit: one door from the outside, and an inside door from the landlord's residence.

The tenant claims that without proper notice, the landlord has repeatedly either knocked or banged on the door(s) or window(s) of the unit with the expectation of being given immediate entry, or entered the unit without the tenant's consent while the tenant was absent. The landlord claims that entry has been required in order to access the breaker switch which is located in the unit. In the result, the tenant claims that his right to quiet enjoyment has been breached on numerous occasions. There is no clear understanding as to why the electrical power has cut out, such that the breaker switch must be accessed so frequently. Further, the landlord has removed a stove and a microwave oven which were provided in the unit when the tenancy first began.

During the hearing the parties exchanged views on a number of concerns about each other, as well as around the condition of the unit.

Analysis

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

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

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, 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).

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, in part, as follows:

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, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the documentary evidence and the affirmed testimony of the parties, my findings, including certain **ORDERS**, are set out below.

- 1) I find that on a number of occasions during this short tenancy, the landlord has breached the provisions set out in section 29 of the Act, as above, by failing to give the tenant proper notice to enter the rental unit. Accordingly, I find that the tenant has established entitlement to compensation for a breach of the right to quiet enjoyment in the amount of \$50.00. I **ORDER** that the tenant may withhold this amount from the next regular payment of monthly rent.
- 2) Going forward, I hereby **ORDER** the landlord to comply with the statutory provisions set out above in section 29 of the Act.
- 3) I hereby **ORDER** the landlord to have the electrical wiring in the house / unit inspected by a duly certified electrician by no later than midnight, Saturday, September 15, 2012.
- 4) I hereby **ORDER** the landlord to limit authorized access to the unit by way of the outside door only.
- 5) I hereby **ORDER** the landlord to make full repairs as necessary to the door and the door jamb surrounding the inside door access to the unit, by no later than midnight, Saturday, September 15, 2012.
- 6) I hereby **ORDER** the landlord to replace the lock on the door providing inside access to the unit by no later than midnight, Saturday, September 15, 2012.
- 7) I hereby **ORDER** the landlord to ensure that key access to the replacement lock on the inside access door to the unit, is available only on the side of the door which faces into the unit, and limit the provision of keys to the tenant only.

Conclusion

I order that the tenant may **withhold \$50.00** from the next regular payment of monthly rent.

The landlord is ordered to FORTHWITH **comply with all ORDERS** set out above.

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: August 27, 2012.

Residential Tenancy Branch