



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order allowing the tenant to change the locks to the rental unit and to reduce rent for repairs.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order authorizing the tenant to change the locks to the rental unit and to reduce rent for repairs not complete, pursuant to Sections 29, 32, 65, and 70 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on March 5, 2012 for a month to month tenancy beginning on January 1, 2012 for a monthly rent of \$950.00 due on the 1st of each month.

The tenant submits that he first reported problems with the toilet to the landlord in February 2012 and other plumbing problems in April and May 2012, including a dripping hot water faucet. The tenant claims this has resulted in increase hydro costs. The tenant submits the landlord has not affected repairs sufficient to end the plumbing problems.

The tenant submits that because the landlord has not taken care of the plumbing problems on July 14, 2012 there was a flood with sewage backing up in to the rental unit and ruining the carpets and leaving him to live in a home with fecal matter in the carpets.

The tenant has provided 23 photographs of the interior and exterior of the rental unit with 6 photographs showing some flooding. These 6 pictures are of the toilet and bathroom and show clear water flowing over the top of the toilet bowl and some towels on the tile floor. Signs of flooding are not visible in any of the other photographs submitted.

The landlord submits that he has called in plumbers and has been dealing with the problems but that it appears that one problem is fixed and then immediately afterward another problem arises and when is informed of the problems he deals with it as soon as possible.

The tenant seeks a rent reduction of \$100.00 per month for the duration of the tenancy because of the landlord's failure to deal with these plumbing problems and for living with carpeting that is contaminated with fecal matter.

The tenant also submits that on an occasion when a plumber was at the rental unit the landlord arrived and just entered the unit and went in to talk to the plumber. The landlord testified that as this had been a follow up visit from the plumber he wanted to meet with the plumber to discuss any problems.

The landlord goes on to say that the tenant saw the landlord coming and opened up the door to let the landlord in. The landlord further stated that he did not need to meet with the plumber in the unit and that had he known the tenant was going to be upset by it he would have met with the plumber outside.

The tenant testified that he was not aware of any other times that the landlord may have entered the rental unit but seeks to change the locks to restrict the landlord's ability to enter the rental unit.

Analysis

When one party makes a claim or requests an action against the other party, the burden of proof rests with the party making the claim or request. In a case where a tenant seeks to change the locks to restrict the landlord's access to a rental unit the burden is on the tenant to provide sufficient evidence that the landlord is maliciously and repeatedly entering the rental unit outside of the limitations for landlord access under Section 29 of the *Act*.

Section 29 stipulates that a landlord must not enter a rental unit unless one of the following applies:

1. The tenant gives permission at the time of entry or not more than 30 days before the entry;
2. At least 24 hours in advance the landlord gives written notice that includes the reasonable purpose for entry and the date and time of the entry;
3. The landlord has an order from the director authorizing the entry;
4. The tenant has abandoned the rental unit; or
5. An emergency exists and the entry is necessary to protect life or property.

Section 29 also allows the landlord to inspect the rental unit on a monthly basis as long as the entry complies with the stipulations noted above.

In the case before me, the landlord testified the tenant opened the door to let him while the tenant submits that he didn't even know the landlord had arrived on the property until he entered the unit. When faced with dispute testimony the burden on the party making the claim requires that party to provide additional evidence that may substantiate their claim.

Additionally, I find the landlord was there specifically to deal with the plumbing problems the tenant had reported and as the tenant has not complained that the plumber obtained access without notice I find the fact the landlord attended the property and entered the unit is a directly and substantially related to the notice the landlord had given the tenant for the plumbers entry.

I find the tenant has failed to provide sufficient evidence that the landlord entered the rental unit without his permission. In fact, as I find the landlord's entry is an extension of the plumber's entry I find the landlord did in fact have the tenant's permission to enter the unit.

In addition, even if the tenant had established the landlord had entered the unit on this one occasion without the tenant's permission or 24 hour notice I find that a single occurrence of an entry that was not compliant with Section 29 is insufficient cause to deny the landlord all future access by changing the locks.

In relation to the tenant's claim for reduced rent for the duration of the tenancy, I note the tenancy is a month to month tenancy and at the time of this hearing neither party had intentions of ending the tenancy. As such, I find the motivation behind the tenant's application is, primarily, to obtain a rent reduction.

Further, I find the landlord has been making attempts to correct the plumbing problems identified by the tenant and that the tenant has failed to substantiate his claim that the landlord is non-complying with his obligations to maintain and repair under Section 32 of the *Act*.

I find the tenant's evidence, in particular his photographic evidence, does not substantiate his claim that a flood containing raw sewage occurred or that even if it did occur that it reached any carpeted areas of the rental unit.

In addition, Section 7 of the *Act* requires a party to a tenancy who is claiming compensation from the other party's non-compliance with the *Act* to take all reasonable steps to mitigate any of their losses.

As the tenant has only applied for a rent reduction and has neither in this Application or previously sought an order to have the landlord complete repairs I find the tenant took no steps to mitigate any losses to sufficiently warrant a rent reduction at this time.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 16, 2012.

Residential Tenancy Branch