



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, LAT

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; authorization to change the locks to the rental unit; and, Orders to suspend or set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and procedural matters

The tenant named two individuals who work for the landlord as respondents in filing this application. With consent of both parties, the application was amended to name the legal landlord as it appears on the tenancy agreement.

The tenant wanted a certain employee of the landlord to appear at the hearing to answer for his actions of August 28, 2012. The landlord submitted that this person was away on vacation leave. I noted that a second employee who entered the unit on August 28, 2012 was in attendance at the hearing. Therefore, I found it unnecessary to adjourn this matter and I informed the tenant that the hearing would be an opportunity for her to make submissions as to what happened on August 28, 2012 from her perspective.

Issue(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation from the landlord?
2. Has the tenant established a basis to allow her to change the locks to her rental unit?
3. Is it necessary or appropriate to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The tenancy commenced August 2010 and the tenant currently pays monthly rent of \$428.00 on a month-to-month basis. The landlord is a housing society that offers rental units to low-income seniors.

This dispute revolved largely around the landlord's staff entering the tenant's unit on August 28, 2012 although the tenant asserted that the landlord has entered her unit illegally on a previous occasion.

Below, I have summarized the parties' respective positions.

Tenant's submissions –

The tenant could not recall the date of the first entry but estimated it to be in June 2012 or July 2012. The tenant submitted she knows her unit was entered because her heat and light switch were adjusted. Upon bringing this to the attention of the landlord she was offered the option to relocate to another unit. The tenant acknowledged that she essentially dropped the issue and was not overly concerned about it.

In the morning of August 28, 2012 the tenant awoke to an unknown female person in her unit. This person was later identified as the office supervisor. Waiting outside the rental unit was a man, later identified as the relief duty manager and maintenance man. At the time the landlord's agents explained to the tenant that they were concerned she was in harm's way as a call had come in at 1:40 a.m. that screaming and banging could be heard coming from the tenant's unit.

The tenant submitted that she felt extremely violated by the intrusion as she was not in harm's way and she had not been screaming or banging the night before. The tenant questioned the agents were concerned about her well-being since they did not respond when the complaint came in at 1:40 a.m.

In light of the above, the tenant requests the following remedies:

1. That the tenant's locks be changed, at the landlord's expense, and the tenant shall hold the only key.
2. The tenant be compensated \$1,000.00 for:
 - a. Anticipated costs to move elsewhere, away from the landlord; and/or
 - b. Emotional distress associated to loss of quiet enjoyment.

Landlord's position –

The landlord explained that at the beginning of every tenancy the landlord informs the tenant that it is the landlord's policy to check on their well-being if the landlord suspects the tenant has suffered a fall or other medical issue. The vast majority of the landlord's senior tenants appreciate the landlord's practice.

With respect to the allegation of an earlier entry, the landlord acknowledged that in early July 2012 the tenant complained that someone had been in her unit but that the tenant did not believe it was any of the landlord's staff that had entered. The landlord informed the tenant that the landlord's staff would not have entered her unit. Nevertheless, the landlord offered the tenant a transfer to another property but the tenant declined the offer.

With respect to what happened on August 28, 2012 the landlord acknowledged that the landlord did not consider the noise complaint to involve an emergency situation. The landlord explained that they had received complaints of this nature before and usually the tenant's behaviour subsides on its own in a short amount of time. When the complaint came in at 1:40 a.m. the relief manager was several miles away. The relief manager consulted with his superior, who was at the hearing, and it was decided that attending the rental unit at that time may aggravate the tenant. Nevertheless, the landlord's agents thought it best to deal with the situation and check on the tenant in the morning. When the relief manager arrived at the building in the morning, he and the female office supervisor knocked in the tenant's door. When there was no answer they phoned the tenant from the office and left a message that they wanted to enter to check on her. The agents returned to the rental unit, knocked again and when there was no answer the female office supervisor entered. The tenant reacted in an abusive manner toward the landlord's agents and then toward the tenant's neighbour. A subsequent meeting with the tenant in the landlord's office also resulted in abusive language directed towards the landlord's agents and Board member.

Since the tenant reacted very negatively to the landlord's entry on August 28, 2012 the landlord has decided that in future any concerns over the tenant's health or behaviour will result in a call to the police or ambulance. The landlord was fully agreeable to limiting entry to those circumstances provided under section 29 of the Act.

The landlord objects to the tenant's request to have the only key to the rental unit as it unnecessary.

The landlord objected to the tenant's request for compensation given the circumstances.

Tenant's response –

In addition to denying that sounds of screaming or banging came from her unit, the tenant denied that she was abusive towards the landlord's staff or any other representative.

The tenant acknowledged that she later discovered the telephone message left on her answering machine by the relief manager on the morning of August 28, 2012. The tenant acknowledged that there has not been an entry since August 28, 2012.

The tenant acknowledged that the Board member suggested she write to the Board of Directors if this dispute could not be resolved. The tenant filed this application and then wrote to the Board. To date she has not received a response from the Board.

The tenant further requested that I intervene with the management of the landlord by reviewing the competency of the management staff. I informed that tenant that such a request not within the scope of the Act or my jurisdiction and I refused to further consider that request.

The written submission and all of the documentary evidence provided by each party has been accepted and considered in making this decision.

Analysis

Upon considering the submissions of each party I provide the following findings and reasons with respect to the application before me.

Section 29 of the Act provides for the landlord's restricted right to enter a rental unit. I have reproduced section 29 below for the parties' reference:

Landlord's right to enter rental unit restricted

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).

[my emphasis added]

A party that makes an application against another party generally has the burden to prove their claim. The burden of proof is based upon the balance of probabilities.

Given the lack of evidence and disputed verbal testimony, I find I am not persuaded that the landlord illegally entered the tenant's unit in June 2012 or July 2012.

With respect to the sequence of events that took place on August 28, 2012 I find, on the balance of probabilities, that the landlord's agents entered the rental unit with good intentions, as it does for most other tenants, to check on the tenant's well-being. I make this determination as I accept that the landlord did receive a complaint of screaming and banging and given the landlord's tenants are mostly elderly who are susceptible to falls or other health conditions. I find no other reasonable explanation for the landlord's entry on August 28, 2012 and I reject the tenant's speculation that the landlord is trying to get rid of the tenant by harassing her in the absence of evidence to corroborate such an allegation.

Although I am satisfied that the landlord's entry on August 28, 2012 was motivated by good intentions, I find the entry was not in response to an emergency, as acknowledged by the landlord. Nor was entry made with the tenant's consent or by way of written notice. Therefore, I find the entry was outside the landlord's restricted rights to enter the unit as provided by section 29 of the Act.

Given the landlord's assurance that it has since changed its practice and the landlord's assurance that all future entries into the rental unit will comply with section 29 of the Act, I find I am satisfied that a future violation of section 29 is highly unlikely.

In light of the above, I deny the tenant's request to change the locks. Nor do I find it necessary to suspend or set conditions upon the landlord's right to enter the unit. Rather, I am satisfied that an Order to the landlord for compliance with section 29 is sufficient. Any future violations of section 29, with respect to this tenancy, may be grounds for the tenant to seek further remedy.

With respect to the tenant's monetary claim I dismiss her claim for the following reasons:

1. Awards for compensation are to be restorative and awards are not made for anticipated losses.
2. I accept that the circumstances surrounding the landlord's entry on August 28, 2012 may cause temporary discomfort for a tenant; however, temporary discomfort does not constitute a breach of quiet enjoyment.

Conclusion

The tenant's request for authorization to change the locks has been denied. The tenant's request that the landlord's right to enter the unit be suspended or have conditions has been denied; however, the landlord has been ordered to ensure future entry into the tenant's unit complies with the requirements of section 29 of the Act. The tenant's request for monetary compensation is dismissed 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: October 09, 2012.

Residential Tenancy Branch