



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, LAT, LRE, OLC, RP, RR

Introduction

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore I will only deal with is the request to cancel a notice to end tenancy at this hearing.

Background and Evidence

The landlord testified that:

- He spoke with the tenant on May 17, 2013 stating he would like to enter the rental unit on the afternoon of May 19, 2013 to repair the plumbing and the tenant agreed to the entry

- He arrived at the rental unit, with his girlfriend and with the plumber, at approximately 5:30 PM on May 19, 2013 and knocked on the door however no one answered.
- When no one answered the door he got his cell phone and phoned the tenants, however again he got no answer, so therefore since it had been prearranged he left them a message informing them that he would be entering to do the repair.
- He then entered the rental unit using his key, and once inside he even called out in a loud voice, in case they were home, to try and get their attention, however initially he still got no response.
- Shortly after he entered however the tenant came running up the stairs yelling at him to get out of the house and since they've been on good terms, he initially thought she was kidding, however it soon became apparent that she was angry.
- He attempted to speak with her to find out what the problem was however she just kept yelling at them to get out of the house and therefore they left the rental unit as asked.
- They found this situation very stressful, as they had no idea why they had been denied access when originally access and been agreed upon.
- The tenants also reported them to the RCMP, which caused even more stress and could affect his work.
- He has subsequently given the tenants a further written notice to enter the rental unit, however the tenants have denied any further access.
- He therefore believes that this tenancy should be ended as the tenants have denied him his rights as a landlord, and have caused him undue stress.

The tenants testified that:

- She did speak with the landlord on May 17, 2013, and did tell him he could enter the rental unit on May 19, 2013 to do the plumbing repair.
- On other occasions when the landlord has requested entry he usually arrived around supper time, however when the landlord had not arrived by 5:00 PM they assumed he was not coming and decided to go and sit in the backyard.
- They did not hear anyone knocking on the door, nor did they hear their phone ring and therefore when they entered the house and heard the landlord yelling she became very frightened as they had not let him in, and she asked him to leave.
- The landlord did not leave right away and started arguing with them in a loud voice, making threats to increase the rent to \$2500.00.
- They kept insisting that he leave the rental unit, and eventually he did after approximately 2 min..

- They did find another notice from the landlord at approximately 3:20 PM on May 26, 2013, stating that he wanted to enter the rental unit on May 27, 2013 at approximately 5 PM to make repairs, however they spoke to the Residential Tenancy Branch and were informed that a notice taped to the door was not considered served for 72 hours, and therefore they sent the landlord an e-mail denying him access as it was not a convenient time.
- They did also phone the RCMP, however they did not lodge any complaint against the landlord, they simply spoke to the RCMP to find out what they could do if the landlord did enter again without their permission.
- They do not believe they have done anything wrong and they therefore ask that this notice to end tenancy be canceled.

Analysis

It's my finding that the tenants have interfered with the landlord's legal right to enter this rental unit.

Section 29(1)(a) of the residential tenancy act states:

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;

Therefore, in this case, since the tenants had given the landlord permission to enter the rental unit not more than 30 days before entry, the landlord did have the right to enter the rental unit to do the plumbing repair.

Further having both knocked on the door, and having phoned the tenants it was reasonable for the landlord to assume they were not present, and to enter the unit using his own landlord copy of the key.

It's also my finding that the landlord was being very considerate, because even after having received no answer at the door, or the phone, he still called out upon entering the rental unit, to make the tenants aware that he had entered, in case they were actually present.

What I do find unreasonable is the tenant's reaction when they found the landlord in the rental unit.

The tenants testified that they were aware that the landlord was coming that afternoon, and further testified that they had waited for the landlord until 5:00 PM before moving to the backyard, and therefore since the landlord arrived only a half-hour later, I fail to see why they were so surprised to find that the landlord had come to do a plumbing repair.

I can understand that the tenants would be startled upon entering the house and finding someone there, however since they had arranged for the landlord to come and do the plumbing repair, I find their reaction and subsequent refusal to allow the landlord to stay and do the repair, totally unreasonable.

The tenants even testified that they recognized the landlord's voice, and since there'd been no previous issues with the landlord I fail to see why they're now stating they were afraid of the landlord.

Therefore since it is my finding that, in this case, it was the tenants that were at fault, and it's also my finding that their actions were unreasonable, and caused undue stress for the landlord, I will not cancel this notice to end tenancy.

Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed and this tenancy ends on June 30, 2013.

Further since this tenancy is ending I also dismiss, without leave to reapply, the remaining claims on the application.

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: June 17, 2013

Residential Tenancy Branch

