



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking orders to restrict landlord's access to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The tenant submitted an amended Application for Dispute Resolution that included seeking an order to allow the tenant to change locks to the rental unit.

The landlord testified that he did not receive evidence of amendment but was prepared and agreed to continue the hearing to include this issue.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit and change the locks on the rental unit, pursuant to Sections 29 and 70 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in June 2007 as a 1 year fixed term tenancy that converted to a month to month tenancy in June 2008 for a current monthly rent of \$779.00 due on the 1st of each month with a security deposit paid.

The tenant submits that the landlord has attempt to or has entered the rental unit without notice and without the permission of the tenant.

In their Application and written submission the tenant spoke about how the landlord had attempted in September 2013 to enter the unit without notice and that he was prevented because a second occupant had chained locked the door. The written submission also suggests that for the entire year of 2013 up to the date of their Application for Dispute Resolution (July 9, 2014) the landlord had required weekly access to the rental unit for "various non-apparent restoration repairs" and that there was little or no notice given for each of these accesses. No testimony was provided by either party on the past year or two but rather testimony was restricted to events primarily in June and July 2014.

The tenants provided into evidence:

- A copy of an email sent to the Residential Tenancy Branch dated September 25, 2013 and a response dated September 30, 2013;
- A copy of a text message dated January 8 (no year provided) that says: "Peter Are you around. We are testing the fire alarm systems. Attached to the text is statement from the tenant saying that "shortly after DEAN demanded access to the apartment..";
- A copy of a text message dated June 3 (no year provided) from "Jamie" to "Peter" that states he had put a notice on the door the day before that he would require access to the rental unit on June 4, 2014;
- A copy of a text message dated June 4 (no year provided) from "Jamie" to "Peter" that states water was found in the rental unit and that they will need to bring in a dryer and dehumidifier;
- A copy of a text message dated June 5 (no year provided) that states the restoration company would be bringing in the fans the following morning;
- A copy of a text message dated June 6 (no year provided) that states Jamie would be posting (that day) "suite access notices for both Monday (June 9) and next Wednesday (June 11)";
- A copy of a text message dated June 16 (no year provided) that states the landlord will have a plumber in the building the following Wednesday (June 18);
- A copy of a text message dated June 17 (no year provided) advising the tenants how to slowly turn the water on after the water is turned off for a period of time;
- A copy of a text message dated June 18 (no year provided) providing the tenants with an update on the repairs made; and
- A copy of a text message undated that states on Monday and Tuesday (July 21 and 22) carpets would be installed in the building and that each rental unit door would be opened to complete the transition work.

During the hearing the tenant testified that the female occupant was home one time when the landlord attempted to enter the unit without proper notice being provided and that because the chain lock was used the landlord couldn't enter. The landlord acknowledged trying to enter the unit but that he had texted the male tenant previously.

The tenant also testified that on July 8, 2014 the carpet installers had attempted to break in to the rental unit while the female occupant was there alone. The landlord submits that while he had provided the carpet installers with keys to some of the rental units he had not provided them with keys to this tenant's unit and he has confirmed that they did attempt to enter this unit with the keys the landlord had provided.

The tenant provided a copy of a video recording showing someone attempting to open the rental unit door and the arm of another person who continuously relocking the door as it is unlocked from the outside.

Analysis

Section 29(1) of the *Act* states 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 purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- d) The landlord has an order of the director authorizing the entry;
- e) The tenant has abandoned the rental unit; or
- f) An emergency exists and the entry is necessary to protect life or property.

From the evidence and testimony of both parties I find that the landlord has entered the unit with notice but has provided notice on some of those occasions by text message. However, as Section 29(1)(b) stipulates that notice must be given at least 24 hours ahead of entry and be written, I note that the service requirements under Section 88 must be considered in the delivery of that written notice.

Section 88 states that all documents that are required or permitted under the Act to be given or served on a person must be given or served:

- a) By leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) By sending a copy by ordinary or registered mail to the address at which the person resides or, if the person is a landlord to the address at which the person carries on business as a landlord;
- d) If the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- e) By leaving a copy at the person's residence with an adult who apparently resides with the person;
- f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- h) By transmitting a copy to a fax number provided as an address for service by the person to be served;
- i) As ordered by the director under Section 71(1);
- j) By any other means of service prescribed in the regulations.

As such, I find that text messaging does not serve the written notice in accordance with the *Act*.

I also note that if the landlord needs to provide written notice of entry and serves that notice pursuant to Section 88 he must also allow for the deemed receive provisions under Section 90.

Section 90 of the *Act* states a document given or served in accordance with Section 88 is deemed to be received:

- a) If given or served by mail, on the 5th day after it is mailed;
- b) If given or served by fax, on the 3rd day after it is faxed;
- c) If given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

- d) If given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

As such, I order the landlord must comply with the requirements under Section 29(1) of the *Act* when seeking to enter the unit, either himself or by any agents or service providers acting on the landlord's behalf. I also order that unless the landlord is allowed access to the rental unit in a manner that does not require written notice (Section 29(1) (a), (d), (e), or (f)) the notice required under Section 29(1)(b) must be served in accordance with Section 88 and be deemed received pursuant to Section 90.

Section 70 of the *Act* stipulates the director may suspend or set conditions on a landlord's right to enter a rental unit under section 29. In addition, if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director may authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

From the testimony and evidence of both parties I find that there is no evidence before me that either the landlord or his carpet installers were attempting to enter the rental unit for purposes other than those that would be reasonable such as dealing with water repairs and later with restoration work required as a result of water damage. Therefore I find no reason to allow the tenants to change the locks and not provide access to the landlord. I dismiss this portion of the tenant's Application for Dispute Resolution.

Conclusion

As per the above, I have ordered the landlord must comply with all of the requirements under the *Act* to provide notice to the tenant of intended entry into the rental unit. If the landlord fails to comply with this order the tenant is at liberty to file a claim for compensation for failure of the landlord to comply with this order.

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: September 30, 2014

Residential Tenancy Branch

