Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order for the Landlord to comply with the Act, to suspend or set conditions on the Landlord's right to access the rental unit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

This hearing was conducted by telephone conference call. At the outset of the hearing the Landlord explained she has a hearing and speech impairment. A second owner (co-landlord) attended the hearing and assisted as necessary. On one or two occasions the Landlord was difficult to understand and she was asked to repeat her testimony. In these instances, I repeated her testimony back to the Landlord to confirm I understood what she was saying.

The Landlord objected to the Tenant's evidence, stating she had not received a copy of this evidence. I canvassed if the Landlord wanted an adjournment to review the evidence. However, the Tenant then explained that the tenancy was ending just over three weeks from the hearing date, and therefore, I found it was not practical to adjourn this matter, as the sole issue was the Landlord accessing the rental unit over the next three weeks for the purposes of showing the rental unit to prospective renters.

Furthermore, the Tenant explained that the evidence was a letter from the Landlord confirming to the Tenant when she had last entered the rental unit, and therefore, the Landlord knew the contents of this letter.

During the hearing I read the contents of the letter dated December 30, 2014, which was sent to the Tenant by the Landlord. The Landlord confirmed she wrote the letter and clarified that the date she had entered the rental unit was on November 21, 2014, and had incorrectly typed November 22, 2014, in the letter.

As the letter was from the Landlord to the Tenant and the Landlord confirmed the contents I allowed the letter in evidence. I have not allowed any of the other evidence from the Tenant, as it was not served on the Landlord.

Issue(s) to be Decided

Should the Landlord be ordered to comply with the Act regarding access to the rental unit?

Should the Landlord's right to access the rental unit be restricted?

Background and Evidence

This tenancy began in or about November of 2011, with the parties entering into a written tenancy agreement, although neither party supplied a copy of the agreement in their evidence. The initial tenancy agreement was for a fixed term of one year, and then reverted to a month to month tenancy. The Tenant testified that he had given the Landlord a notice to end tenancy with the effective date of February 28, 2015.

The Tenant testified that he did not receive proper notice from the Landlord that she was entering the rental unit in November of 2014. In evidence the Tenant produced a letter from the Landlord sent by email informing the Tenant that the Landlord entered the rental unit on November 22, 2014. In the Landlord's letter the Tenant is notified that the Landlord was surprised to see, "… how much stuff has accumulated inside the condo from the last time I was in the condo." The Landlord explains to the Tenant that she is concerned there is too much "stuff" inside the condo. She requests the Tenant move the excess into storage by January 31, 2015.

The Tenant testified that he did not receive any notice from the Landlord that she was entering the rental unit. He testified that after having received the letter described above, he checked his email folders and found an email from the Landlord notifying him of this access, although this email had gone into his email "spam" folder and he did not see it. He testified that he was not aware the Landlord was entering the rental unit at the time she did and he testified that he did not confirm the email or provide permission to the Landlord to enter the rental unit at the time she did.

The Tenant clarified that often the Landlord would text message him and email his spouse, who also resides in the rental unit.

The Landlord testified that she has corresponded with the Tenant and his spouse by email and text for quite a while. The Landlord explained she resides out of the province and has corresponded primarily by text, email and phone calls.

The Landlord testified she had only been in the condo one other time, and that was in June of 2013, to repair caulking in a bathroom. The Landlord testified that at that time she also had to attend to a door that had been damaged in the rental unit. She testified she spent about three hours in the condo at that time. The parties agreed the Landlord had permission to enter on this occasion.

The Landlord acknowledged that she did not receive a confirmation from the Tenant that he received her email notice that she was entering the rental unit.

The parties also had a brief discussion about how they would deal with the Landlord's real estate agent entering the rental unit to show it to prospective renters in the next few weeks.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached the Act by failing to provide the Tenant with the required notice to enter the rental unit and by failing to serve the Tenant with the notice in an approved manner. While the Tenant suggested this was a wilful, deliberate breach of the Act, I am unable to find that applies in this situation.

I accept that the parties did have communications by email, text and phone calls and this may have led the Landlord to believe that her notice to enter the rental unit was permitted by the Tenant. While this may have been an innocent misunderstanding by the Landlord, it is still a breach of the Act and accordingly I order that the Landlord must comply with the Act in regard to accessing the rental unit, as set out below. The Landlord is ordered to comply with section 29 of the Act, which provides how a Landlord has a right to access the rental unit:

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:
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> (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).

[Reproduced as written.]

If the Landlord does not have the verbal permission of the Tenant to enter at a certain time the Landlord must provide the Tenant with a written notice stating the purpose for the entry and the date and time of entry, in accordance with the above. The Landlord's Agent may also provide this notice or speak with the Tenant to provide verbal permission to enter.

Any written notice given to the Tenant by the Landlord must comply with section 88 of the Act which sets out how to serve documents:

88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(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 mail 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) *[director's orders: delivery and service of documents]*;

(j) by any other means of service prescribed in the regulations.

[Reproduced as written.]

Service by the above methods are deemed to be received as follows:

90 A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:

(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.

[Reproduced as written.]

I do not find the Landlord should have further restrictions placed on her lawful right under the Act to access the rental unit, as this appears to have been a single instance and not a recurring practise by the Landlord, and therefore, I dismiss the part of the Tenant's claim asking for greater restrictions.

I also note that the Tenant testified he will cooperate with the Landlord's proper notifications to access the rental unit to show to prospective renters.

Conclusion

I find the Landlord breached the Act by failing to provide the proper notice to access the rental unit and by failing to serve the Tenant in a prescribed manner.

Nevertheless, I do not find this was an intentional breach of the Act; rather, the Landlord misunderstood the circumstances due to the parties' prior use of email and text message to correspond with.

The Landlord is ordered to comply with the Act and to pay the Tenant the $50.00 filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 06, 2015

Residential Tenancy Branch