



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: LRE, OLC, O, FF
Landlord: O, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed application pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the landlord to comply with the Act - Sections 28 - 29
2. An Order suspending or setting conditions on the landlord's right to enter the rental unit - Section 29.
3. An Order to recover the filing fee for this application - Section 72

The landlord filed application for Orders as follows;

1. An Order for entry of the rental unit when given by the landlord's realtor pursuant to the provisions of Section 29.- Section 29
2. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. The parties each acknowledged receiving the other's application and respective evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Preliminary matters

The tenant objected to JS appearing as representative for the landlord in this matter as they claimed they are also the landlord's realtor. JS claimed they were representing the landlord for the purpose of their application. JS provided into evidence a hand-written

letter signed by the owner landlords stating that JS, was authorized to represent them in the hearing in respect to their application. I accepted JS represents the landlord for the purposes of this hearing (this matter).

The tenant disputed the validity of the landlord's application as it referenced the dispute address with a different second digit in the address number, and that the address error was repeated within the landlord's application. JS explained it as an inadvertent error which inadvertently became repeated throughout the documentation. I accepted this explanation and confirm the style of cause reflects the valid dispute address for this matter. Both applications advanced on the merits of the respective application.

Issue(s) to be Decided

- Is the landlord entitled to an Order allowing them entry upon written notice to enter by their realtor?
- Should the landlord's right to enter the rental unit be made conditional?
- Should the landlord be Ordered to comply with the Act?
- Are the parties entitled to recover their respective filing fee?

Background and Evidence

The evidence is that the parties' fixed-term tenancy agreement began October 02, 2014 and ends September 30, 2015. Rent in the amount of \$2780.00 is payable in advance on the day before the first day of each month. I have benefit of the tenancy agreement which confirms that at the end of the fixed term the tenant must vacate.

The tenant claims the landlord is attempting, by their conduct toward them, to frustrate or otherwise coerce the tenants to end the fixed-term tenancy earlier than contracted. The tenant claims the landlord is negatively impacting their quiet enjoyment through a series of what they describe as unreasonable demands and requests, and purports or "threats" to sell the rental unit. The tenant provided copies of disputatious communications with the landlord and JS leading to this hearing. The tenant claims the landlord has directed JS – the landlord's realtor – to make intrusive demands and requests of the tenant, which they claim have been forceful and disrespectful, aimed at

selling the rental unit, despite evidence the rental unit is actively listed for sale or that JS is legally tasked to sell the rental unit. The tenant asserts it still remains unproven the landlord has listed the unit for sale. Moreover, the tenant claims the landlord's steps toward selling the rental unit is contrary to an oral agreement of the parties the rental unit would not be offered for sale during the term of the tenancy. None the less, the tenant testified that to date they partly co-operated with the landlord's demands; however, if in accepting the landlord's determination to sell the rental unit they want their quiet enjoyment of the rental unit protected by the landlord's strict adherence to the landlord's right to enter the unit given the landlord's realtor's conduct to date.

The landlord representative in this matter testified they have been tasked with selling the rental unit and they acknowledge the fixed-term nature of the tenancy, and the tenant's right to freedom from unreasonable disturbance. They testified to have attempted to accommodate the tenant's concerns but that the tenant has denied them entry to take measurements and photographs inside the rental unit. The landlord representative, JS, provided that on February 08, 2015 they gave the tenant a written notice to enter for the following day, and that on arrival on February 09, 2015 the tenant denied them entry. They testified that their request of an Order for entry is pursuant to what is allowed by the Act and is reasonable and that they are flexible and cognoscente of the tenant's expectation to privacy and do not seek to alienate the tenant.

The parties discussed potential arrangement to address their mutual needs, to no avail. The tenant offered a set of conditions for access by JS which they stated was least intrusive to their family life. JS offered a contrasting set of conditions for access which they stated most likely aided a sale of the rental unit.

Analysis

Residential Tenancy Policy Guideline # 7 – Locks and Access addresses matters of the right of *landlords* to access the rental unit under certain conditions, vis-a-vis the *tenant's* right to quiet enjoyment and peaceful occupation of the rental unit – as intended by the legislation prescribed in **Sections 28 and 29** of the Act. The Act also defines “**landlord**”, in relation to a rental unit. Full versions of the Policy Guideline and the Act

can be accessed via: www.gov.bc.ca/landlordtenant , under Tools and Resources > Policy Guidelines and > Legislation (the Law).

In summary, I find **the tenant** in this matter has a right under the provisions of **Section 28** of the Act, to reasonable privacy and freedom from unreasonable disturbance, amongst other rights. In addition the tenant has a right to exclusive possession of the rental unit, subject only to the landlord's limited right to enter the unit. **The landlord** is effectively placed on notice by **Section 28** in respect to their duty of care to the tenant, and is guided by **Section 29** of the Act. For the purpose of the matters before this hearing the landlord is specifically guided by the provisions of Section 29(1)(b)(i) and (ii). The landlord must give the tenant valid written notice of entry not less than 24 hours and not more than 30 days before the time of entry, and that the notice must state a *reasonable purpose* for the entry - and compliance with subsection (b)(ii). The notice must be served in accordance with **Section 88** of the Act, and is deemed received in accordance with **Section 90** of the Act. Particular to the issues of this matter, the following excerpt from **Residential Tenancy Policy Guideline # 7** must be noted.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access.

A "reasonable purpose" may include:

- *inspecting the premises for damage,*
- *carrying out repairs to the premises,*
- *showing the premises to prospective tenants, or*
- *showing the premises to prospective purchasers.*

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

Both parties are advised to review the aforementioned Policy Guideline and noted Legislation. I find that the landlord's realtor, JS, is not a "landlord" within **Definitions** of the Act. They neither exercise powers nor perform duties under the Act as a landlord. The realtor's role is to act as the landlord's authorized agent to solely achieve a sale of the landlord's property. They effectively contract with the owner to this end. The landlord, through their representative for this hearing, seeks an Order authorizing that a notice to enter by them, their realtor, pursuant to Section 29 be equally valid as a notice from the landlord. In this respect, it is relevant to highlight that it is not coincidental that the safeguards in Section 29 of the Act immediately follow the rights of the tenant expressed in Section 28. I find the Act is clear that the test for entry prescribed by Section 29 aims to make *the landlord* mindful and accountable for the rights of the tenant - and not their realtor, whose interest may not align with the legal onus placed on the landlord. Despite the landlord's request that notice to enter by their realtor be Ordered as valid notice from themselves, I find the Act does not operate to shift the legal onus of the landlord to an entity that does not hold the same duty of care to the tenant as the landlord, and to this end, I find the Act solely specifies "landlord" as the sole entity permitted to present a valid notice to enter. Therefore, I find the landlord's application for an Order authorizing entry with written notice from their realtor **is dismissed**.

The landlord **is Ordered** to strictly comply with **Section 28 and 29** of the Act. Once the landlord establishes a valid notice of entry has been given to the tenant and the tenant prevents the entry, if necessary, the landlord has leave to reapply for an Order for entry.

I find the evidence presented by the parties is that to date there has been abundance of interaction between them mired in dispute and positioning over the validity of JS as a bona fide realtor for the landlord and the validity of the purpose for access by the

landlord or their realtor. I have not been presented evidence of the effects of *ongoing access* to the rental unit on the rights of the tenant, as access has been denied by the tenant when notice to enter was given by the landlord's realtor. As a result I find the tenant's portion of their application to mold or affect the *landlord's* right to access is premature, and is **dismissed**. If the landlord's valid notices for entry become onerous upon the tenant so as to affect their rights under the Act, as suggested by the above Policy Guideline, the tenant has leave to reapply to restrict the landlord's right of entry.

As the tenant has been partly successful in their application they are entitled to recover their filing fee from the landlord. **I Order** the tenant may deduct **\$50.00** from future rent.

Conclusion

- The landlord's application is dismissed.
- The tenant's application, in part, has been granted, and the balance dismissed.
- If necessary, both parties are granted leave to reapply.

This Decision is final and binding on both parties.

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: March 05, 2015

Residential Tenancy Branch