



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to comply with the *Residential Tenancy Act* (Act), regulations or tenancy agreement.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the Act; served by registered mail on April 28, 2015. Canada Post tracking numbers were provided by the tenant in verbal testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the Act.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. The landlord provided documentary evidence for the hearing. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the Act?

Background and Evidence

The tenant testified that this month to month tenancy started on January 01, 2009. The tenant pays a subsidized rent of \$348.00 per month.

The tenant testified that the landlord put a Notice of Entry on the tenant's door on or about April 07, 2014. This Notice gave two dates for entry of April 08 and April 09, 2015 with an estimated time of entry between 8.30 a.m. and 4.00 p.m. The Notice provided a reason of entry that the annual smoke detector and heat testing was required.

The tenant testified that he has a brain injury and this causes him to vomit in his sleep. The tenant seeks to maintain his dignity by being able to clean up any vomit prior to anyone coming into his unit and therefore seeks an exact date when the landlord will enter rather than be given two separate dates.

The tenant seeks an Order for the landlord to comply with s. 29 of the *Act* and provide 24 hours' notice and an exact date the landlord will enter the tenant's unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenant. I refer the parties to s. 29 of the *Act* which 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;

(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).

I have reviewed the Notice provided in evidence for the hearing and find the Notice does comply with s. 29 of the *Act* with regard to the reason of entry; however, the *Act* does not state that the landlord can give a vague date or estimated time of entry; it states the landlord must give a date and a time of entry between 8.00 a.m. and 9.00 p.m.

While I concur that this is a common practise for landlords to put estimated times and dates of entry on a Notice for an inspection of the smoke detectors and that it is difficult to pin down an exact time of entry; I caution the landlord to give the tenant a time and date the landlord is going to enter the unit so the tenant has the opportunity to make himself available or to prepare his unit for visitors. The landlord must also be mindful when serving a Notice such as this on the tenant's door that they must take into account that a Notice posted on a door is not deemed to have been served until three days after posting pursuant to s.90(c) of the *Act*.

Consequently, if the Notice was served upon the tenant's door on April 07, 2015 and the tenant does not get the Notice on that date then the Notice would not be deemed served for another three days and the 24 hours would start from that time. The Notice is undated so I am unable to determine when it was served but I do caution the landlord to ensure they allow the extra three days when serving a Notice in this manner; if however the Notice is served in person it is deemed to be served at the time it is handed to the tenant and therefore the 24 hours start from that time.

Conclusion

I Order the landlord to comply with s. 29 of the *Act* and provide 24 hours written notice ensuring the date and time of entry is clearly recorded and ensure the tenant is given sufficient notice if the Notice is posted to the tenant's door.

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: May 20, 2015

Residential Tenancy Branch

