Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSS HOUSE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MT, OLC, PSF, LRE, RR, O

Introduction

These proceedings relate to cross applications.

On February 19, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for:

- a monetary Order for money owed or compensation for damage or loss;
- an Order requiring the Landlord to make repairs to the rental unit;
- an Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act);*
- more time to make an application to cancel a Notice to End Tenancy; and
- authority to reduce the rent for repairs, services, or facilities agreed upon but not provided.

The issues in dispute in the Tenant's Application for Dispute Resolution were not considered at the hearing on April 07, 2015 for reasons outlined in my interim decision of April 07, 2015. Those issues were considered at the reconvened hearings.

On March 02, 2015 the Landlord filed an Application for Dispute Resolution for "other". It is apparent from the details of the Application for Dispute Resolution that the Landlord is seeking an Order of Possession and that matter was considered in my interim decision of April 07, 2015.

Service of documents submitted to the Residential Tenancy Branch prior to April 07, 2015 was addressed in my interim decision of April 07, 2015.

On May 27, 2015 the Landlord submitted an additional nine pages of evidence to the Residential Tenancy Branch. The male Agent for the Landlord stated that these pages were posted on the Tenant's door on May 27, 2015. The Tenant acknowledged receipt of this evidence. This evidence was not accepted as evidence for these proceedings, as it was not served in accordance with the Residential Tenancy Branch Rules of

Procedure, which requires Respondents to serve evidence at least seven days prior to the commencement of the hearing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that I may refuse to consider evidence if there has been an unreasonable delay in serving the evidence. As the Landlord did not serve the evidence until six days before the reconvened hearing on June 02, 2014 and all of the evidence was, or could have been available with reasonable effort, prior to May 12, 2015, I find that the Landlord did not take reasonable steps to ensure the evidence was received seven days prior to the reconvened hearing and I refused to accept these documents as evidence.

In determining that the evidence should not be accepted, I concluded that much of the evidence submitted by the Landlord on May 27, 2015 relates to the Landlord's application for an Order of Possession, which was determined on April 07, 2015. I therefore find that much of this evidence is not relevant to the issues that still need to be determined.

No documents have been submitted since May 27, 2015 and no additional documents have been accepted as evidence for these proceedings.

Both parties were represented at all hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. I note that the testimony provided by the Tenant was highly repetitive and on several occasions he was prevented from repeating testimony that had been previously presented.

Issue Decided in my Interim Decision of April 07, 2015

Is the Landlord entitled to an Order of Possession?

Issues to be Determined in this Decision

Is there a need to issue an Order requiring the Landlord to make provide services/facilities?
Is the Tenant entitled to a rent refund for repairs, services, or facilities agreed upon but not provided?
Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?
Is there a need to issue an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement?
Is there a need to issue an Order suspending or setting limits on the Landlord's right to enter the rental unit?

Preliminary Matter

At the hearing the Tenant asked for an Order requiring the Landlord to repair the door/lock to the rental unit. The male Agent for the Landlord stated that he does not believe there is a problem with the door/lock to the rental unit and that he was not aware that this would be the subject of this dispute resolution proceeding.

The Tenant was advised that his application for an Order requiring the Landlord to repair his front door would not be considered at these proceedings, pursuant to section 59(5)(a) of the *Act,* because his Application for Dispute Resolution did not provide sufficient particulars of this claim, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the fact that the Tenant's Application for Dispute Resolution did not clearly and concisely inform the Landlord that problems with his front door would be the subject of these proceedings.

The Tenant stated that the Landlord should have known this would be the subject of these proceedings as he provided a photograph of the problem with the door and because on page two of the addendum to the Application for Dispute Resolution he wrote: "rental not under code (substandard) – not a new reno. * see door knob/latch and firedoor hinge." Although the Tenant refers to a door knob in his four page "details of dispute", the nature of this claim was unclear to me and I fully accept that the Landlord did not understand the Tenant was seeking repairs to his door /lock.

I find that proceeding with this claim would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the claim.

The Tenant retains the right to file another Application for Dispute Resolution seeking repairs to the door of the rental unit if the door does not comply with health and safety standards.

I find it appropriate here to remind the Tenant that he does not have the right to change the locks to this rental unit without consent from the Landlord and that to do so could jeopardize his tenancy.

Background and Evidence

The Tenant stated that sometime around Christmas of 2014 or the beginning of 2015 he was awakened by the sound of his door opening. He stated that the Witness for the Landlord was at the door and told him that he needed to change the lock on the door of the rental unit. The Tenant stated that he did not receive notice of the Landlord's intent to change the lock on the door of his rental unit nor had he seen the notices of the repair that had allegedly been posted in various areas of the residential complex.

The male Agent for the Landlord stated that a "general notice" about the need to replace the locks on doors was posted on the main entry doors to the residential complex and in

the stairwells. He stated that the notices were posted approximately two weeks prior to the repairs being made and he believes that the Tenant would have seen these notices. A copy of the "general notice" was not submitted in evidence.

The Witness for the Landlord stated that the Tenant allowed him to change the lock on the door of the rental unit when he attended in late December of 2014 or early January of 2015. He stated that after knocking on the door of the rental unit he opened the door and determined that the Tenant had been sleeping. He stated that he does not know how notice of entry was provided to the Tenant prior to the date of his entry.

The Tenant stated that on February 06, 2015 the male Landlord opened his front door without knocking and asked him if his phone was working. He stated that he did not receive prior notice of his intent to enter the rental unit.

The male Agent for the Landlord stated that he is not certain of the date but on, or about, February 06, 2015, he knocked on the Tenant's door and, when the Tenant did not answer he opened the door. He stated that he did not give prior notice of his intent to enter and he entered because he deemed it an "emergency".

The male Agent for the Landlord stated that a technician from the telephone company had restored telephone service to the residential complex on the date of the entry and there was a concern that the Tenant's telephone had been disconnected in the process. He stated they wanted to ensure the Tenant's telephone had not been disconnected before the technician left the building so the Tenant's telephone service was not interrupted for any significant period of time. He stated that he considered this an emergency because having a telephone was extremely important to the Tenant.

The Tenant and the Landlord agree that:

- on May 27, 2015 the male Agent for the Landlord knocked on the Tenant's front door;
- the Agent for the Landlord called out that he need to check the lock on the door;
- the Agent for the Landlord attempted to insert a key into the door lock; and
- the Agent for the Landlord pushed the door open.

The male Agent for the Landlord stated that on the basis of information contained in the Tenant's Application for Dispute Resolution he became concerned that the Tenant had changed the lock to the rental unit without providing the Landlord with a duplicate key to the lock. He stated that his intent was to simply insert the Landlord's key into the lock to determine if the key fit the lock and that he did not intend to enter the rental unit or to open the door of the unit. He stated that he called out three times prior to trying the key to inform the Tenant that he did not wish to enter the unit.

The male Agent for the Landlord stated that he applied pressure to the key as it would not fit into the lock, at which time the door swung open. He stated that he believes the door swung open because it was unlocked and was not properly closed. The Tenant

stated that he changed to lock on his door, without permission from the Landlord, on February 28, 2015.

The Tenant is seeking an Order requiring the Landlord to repair the area for storing bicycles. The Landlord and the Tenant agree that #23 of the rules for the residential complex stipulate that there is a “bicycle parking area” in the compound beside the garbage bins.

The male Agent for the Landlord stated that the bicycle parking area is not intended to be a secure area to park bicycles and that #11 of the rules of the residential complex clearly specifies that the Landlord is not responsible for lost, stolen, or damaged bicycles. The Tenant stated that when he entered into the tenancy he understood the bicycle parking area was a secure compound.

The Landlord and the Tenant agree that the chain-link fence has a hole in it, which was present when the tenancy began. The Tenant is seeking an Order requiring the Landlord to repair the chain-link fence. The male Agent for the Landlord stated that the Landlord does not want to repair this bicycle parking area as it is on city property and that city has not yet determined if the parking area can remain.

The Tenant stated that his bicycle was stolen from the bicycle compound during the tenancy. The Landlord and the Tenant agree that the Tenant was provided with the “house rules” at the start of the tenancy. The parties agree that the house rules declare the Landlord is not responsible for stolen for lost or stolen items, including bicycle.

The Landlord and the Tenant agree that the door to the bicycle storage area is equipped with a non-functioning electronic lock, which was not working when the tenancy began. The Tenant is seeking an Order requiring the Landlord to repair the lock. The male Agent for the Landlord stated that the Landlord does not want to repair the lock because it has been regularly vandalized in the past. He stated the electronic lock was installed approximately four years ago and has not worked for approximately three years.

The parties agree that the bicycle storage area can be accessed from inside the residential complex but tenants are not provided with keys that provide access to the area from outside.

The Tenant contends that when he moved into the rental unit he was told that telephone service would be provided with the rental unit, which he presumed meant private telephone service. The male Agent for the Landlord stated that the Tenant was told he had access to a common telephone. He noted there was some service interruption to that common telephone service, for which he has previously offered compensation to the Tenant.

The tenancy agreement, which was submitted in evidence, does not indicate that private telephone service is provided with the rental unit.

The Tenant stated that when he moved into the rental unit the telephone jack did not work, which he reported to the female Agent for the Landlord when the tenancy began on May 01, 2014. He stated that when he reported the problem he was not given a direct response. He insists that the female Agent for the Landlord never told him that he could make arrangements to have telephone service in his rental unit and that approximately nine months later the male Agent for the Landlord told him he could not have phone service in his rental unit.

The female Agent for the Landlord stated that when the problem with the telephone jack was reported to the Tenant she advised him the telephone jack in the room was not functional and that he would have to make his own arrangements to have telephone service if he wanted private service.

The Tenant stated that sometime in the summer of 2014 he contacted a well-known service provider and was informed by this service provider that they were unable to provide service to the rental unit. He stated that at this time he was informed that another well-known service provider may be able to provide service to the rental unit but he opted not to pursue that option as he did not wish to open an account with another service provider.

The Tenant stated that he eventually contacted the second service-provider in January of 2015 and they were able to provide telephone service to his rental unit. He stated that he has had phone service in the room since January of 2015.

The male Agent for the Landlord stated that when telephone service was provided to the rental unit the main service to the entire residential complex was inadvertently disconnected. He stated that he was advised that only one telephone line to the building was functional, at which time he told the Tenant he could not have telephone service in this rental unit. The male Agent for the Landlord stated that in spite of what he had been told the service provider was able to provide phone service to the rental unit without impacting service to the entire complex.

The Tenant contends that he was told free Wi-Fi was included with the tenancy. The male Agent for the Landlord stated that Tenant was told that there was ethernet connectivity in the rental unit but he was never told the service would be free. The Tenant stated that there is an ethernet outlet in the rental unit but his computer is not working so he does not know if the outlet is functioning. The tenancy agreement does not indicate that free internet service is provided with the rental unit.

The Tenant is seeking compensation for loss of quiet enjoyment as a result of the alleged deficiencies with the rental unit, the lack of telephone/Wi-Fi service, and the unlawful entries. He contends the unlawful entries have significantly impacted his health and well-being due to fear of people entering his rental unit and that the lack of telephone service has impacted his employment.

The Tenant is seeking compensation for costs associated to participating in these proceedings, including costs of photocopying and travelling to the Residential Tenancy Branch.

Analysis

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- 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, which must be reasonable and) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- 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;
- the landlord has an order of the director authorizing the entry;
- the tenant has abandoned the rental unit; and
- an emergency exists and the entry is necessary to protect life or property.

Section 88 of the *Act* stipulates that all documents, other than those referred to in section 89 of the *Act*, 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:

- by leaving a copy with the person;
- if the person is a landlord, by leaving a copy with an agent of the landlord;
- 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;
- if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- by leaving a copy at the person's residence with an adult who apparently resides with the person;
- 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;
- 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;
- by transmitting a copy to a fax number provided as an address for service by the person to be served; or as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

I find that posting a notice to enter a rental unit on the main door to a residential complex, in a stairwell, or in a common area does not constitute service of a document in accordance with section 88(g) of the *Act*. In my view this section requires the notice to be posted near the entrance to the rental unit. This ensures that a tenant clearly understands the notice is intended for the tenant and that the tenant should read it. A notice posted in common areas does not, in my view, sufficiently inform a tenant that notice of an important matter is being served. Posting a general notice in a common area does not, in my view, constitute service, in large part, because a tenant does not actually receive a physical copy of the notice.

As the Landlord did not give proper notice of the Landlord's intent to enter the rental unit to replace the lock, I find that the Witness for the Landlord entered the rental unit without proper authority in late December of 2014 or early January of 2015 when he opened the door to the rental unit for the purpose of replacing the lock.

Section 33 of the *Act* defines "emergency repairs" as repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property; and made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, and the electrical systems. Although this definition relates to "repairs" it serves to illustrate the situations the legislation deems are emergencies.

The Merriam-Webster dictionary defines an emergency as an unexpected and usually dangerous situation that calls for immediate action. I find that a potential problem with a telephone is neither dangerous nor a situation that requires immediate action and cannot, in these particular circumstances, be considered an emergency.

As a problem with telephone service does not constitute an emergency, I find that the Landlord did not have the right to enter the rental unit pursuant to section 29(1)(f) of *t*he *Act* on, or about, February 06, 2015. I therefore find that the male Agent for the Landlord entered the rental unit without lawful authority on, or about, February 06, 2015 when the male Agent for the Landlord opened the Tenant's door to determine if the Tenant's telephone was functioning.

I find that the male Agent for the Landlord acted reasonably on May 27, 2015 when he attempted to insert a key into the lock on the Tenant's door to ensure the lock had not been changed. Landlords are entitled to have a key to a rental unit for the personal safety of people occupying the residential complex and to protect the Landlord's property. Given the potential risks to life and/or property associated with the Landlord not being able to access the rental unit during an emergency, I find that the Landlord had the right, pursuant to section 29(1)(f) of the *Act,* to test the lock on the door of the rental unit to ensure the locks had not been changed.

Although I have determined that agents for the Landlord entered the rental unit without lawful authority on at least two occasions, I cannot conclude that the individuals did so

with malicious intent. I find it more likely that the Landlord simply does not understand a landlord's rights and obligations in regards to entering the rental unit. I therefore do not find it necessary to issue an Order suspending or setting limits on the Landlord's right to enter the rental unit. Rather, I direct the Landlord to carefully review section 29 of the *Act* and to fully comply with the legislation when the Landlord or his agent needs to access the rental unit in the future.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Although I cannot conclude that the Landlord entered the rental unit with malicious intent, I find that the entries in December of 2014/January of 2015 and February of 2015 breached the Tenant's right to the quiet enjoyment of his rental unit. I accept that the Tenant was extremely disturbed by these entries and I grant him compensation, in the amount of $325.00, for these disturbances.

In determining the amount of compensation I was influenced, in part, by the undisputed evidence that on both occasions the party opening the door announced the entry by knocking and that he was not unaware that someone was at his door. I find this less disturbing than if the entry was wholly unannounced. In spite of that awareness, I find that the Tenant has the right to opt not to answer the door.

In determining the amount of compensation I was influenced, in part, by the undisputed fact that the "entry" consisted of simply opening the door and the party did not actually physically enter the room without consent. I find this less intrusive than actually entering the room without consent.

I acknowledge this award is significantly less than the amount being sought by the Tenant. This award is the equivalent of 50% of one months' rent, which I find to be reasonable compensation for entries of this nature.

Section 27 of the *Act* stipulates that a landlord must not terminate or restrict a non-essential or non-material term of the tenancy unless the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant was given the right to use a bicycle storage area, which was insecure due to a hole in the fencing. As the bicycle storage area was insecure at the start of the tenancy and there is no evidence the Tenant was informed the hole in the fence would be repaired, I find that the Landlord is not obligated to provide the Tenant with a secure bicycle storage area. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair the storage area.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord breaching the *Act.* In the absence of evidence that shows the Tenant's bicycle was stolen as a result of the Landlord breaching the *Act*, I cannot conclude that the Landlord is obligated to compensate the Tenant for the loss of his bicycle.

Section 31 of the *Act* stipulates that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. On the basis of the undisputed evidence, I find that the electronic lock to the bicycle storage area was not working when the tenancy began and that the Tenant has always accessed this area from inside the residential complex. As the Landlord has not changed the method of accessing the bicycle storage area since this tenancy began, I find that the Landlord is not obligated to provide the Tenant with electronic access to the bicycle storage area. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair the electronic access.

I find that the Tenant has submitted insufficient evidence to establish that private telephone service or free Wi-Fi/internet was provided with the rental unit. In reaching this conclusion I was heavily influenced by the tenancy agreement submitted in evidence, which does not indicate that either service is included. As the Tenant has failed to establish that either service was provided with the tenancy, I find that the Landlord is not obligated to provide those services.

In the absence of evidence that establishes private telephone service was provided with the rental unit, I find that the Tenant was responsible for arranging to have telephone service provided to the rental unit if he wanted private service. I find that the delay in having telephone service in the rental unit was entirely within the control of the Tenant and that he is not entitled to any rent reduction or compensation as a result of that delay.

In reaching this conclusion I was heavily influenced by his testimony that the first well-known service provider he contacted informed him that another well-known service provider may be able to provide telephone service to the rental unit. Given that the Tenant did not choose to pursue this option for several months and the second service provider was able to provide telephone service to the rental unit, I cannot conclude that the delay in providing service was the fault of the Landlord.

I note that even if the female Agent for the Landlord did not tell the Tenant that he could install a telephone line in this rental unit, as the Tenant contends, this did not prevent him from contacting a service provider shortly after moving into the rental unit.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for transportation costs and photocopying costs, as they are costs which are not denominated, or named, by the *Act.*

Conclusion

The Tenant has established a monetary claim, in the amount of $325.00, in compensation for a breach of his right to the quiet enjoyment of the rental unit and I grant the Tenant a monetary Order for $325.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the Tenant may opt to reduce one monthly rent payment by $325.00, pursuant to section 72(2) of the *Act*, rather than enforcing this monetary Order through the Province of British Columbia Small Claims Court.

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**:** August 04, 2015

Residential Tenancy Branch