



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Preliminary Matters

At the start of the conference call the matter of the Landlord's late evidence was dealt with. The Landlord's Agent said it was sent late to the Tenants' Counsel because the Landlord did not know the Tenants had Counsel until a few days before the hearing. The Landlord's Agent said the late evidence included; power of attorney appointing him as the Landlord's agent, registered mail tracking information, a copy of the notice of entry letter, a title search of the property, the tenancy agreement and photos of the service of the Hearing Package taped to the Tenants' door.

The Tenants' Counsel said she received the evidence this morning and had not had a chance to review it. As a result the Tenants' Counsel thought it may be prejudicial to the Tenants.

On review of the evidence the power of attorney evidence to support M.C. acting as agent for the Landlord has no prejudicial effect on the Tenants as a landlord can appoint an agent to act for a landlord and a landlord does not have to document the agent for the hearing.

Further the Tenant's Counsel said she had a land title search therefore this is not new or prejudicial evidence.

The Landlord's Agent said the Tenants were given a copy of the tenancy agreement at the start of the tenancy and the tenancy agreement was in the female Tenants hand writing. The Tenants' Counsel said she did not believe the Tenants had a copy of the tenancy agreement.

The Landlord's Agent said the tracking information, the copy of entry letter and the photo of service of hearing documents show his efforts to serve the Tenants correctly. The Landlord said he has no control of the Tenants not accepting documents served correctly to them.

After reviewing the discussion about the Landlord's late evidence and given that the Landlord's application is for the right of entry to inspect the property and to conduct a market evaluation of the property; I accept the late evidence as evidence into the hearing.

Introduction

This matter dealt with an application by the Landlord for other considerations (the Landlord's right of entry to the rental unit).

The Landlord's Agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by posting the documents on the door of the Tenants' rental unit July 15, 2016. Based on the evidence of the Landlord's Agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties represented.

Issues(s) to be Decided

1. Is the Landlord's Agent entitled to an Order to enter the property?

Background and Evidence

This tenancy started on May 14, 2011 as a year to year month tenancy. Rent is \$2,000.00 per month payable in advance of the 3rd day of each month. The Tenants did not pay a security deposit. No condition inspection reports were completed for this tenancy.

The Landlord said he served the Tenants on July 9, 2016 by registered mail with a request to enter the property on July 14, 2016 to conduct an inspection and to show the property to a realtor for a market evaluation. The Landlord said entry has been denied by the Tenants. Consequently the Landlord's Agent has applied for an order to enter the property.

The Tenants' Counsel said there is a pending civil action in the Court to determine ownership of the property therefore this hearing should not precede until that court matter is heard.

Further the Tenant's Counsel said the Tenants do not know the Landlord's Agent and it has not been communicated to them that he is acting for the Landlord so they are not will to provide access to the property to someone they do not know.

As well the Tenants Counsel said the Tenants do not believe there is a tenancy agreement between them and the Landlord. The Tenants' Counsel said if there is no tenancy agreement this is not a tenancy.

The Landlord said he provided a copy of the land title in the Landlord's name, a copy of the tenancy agreement written by the female Tenant and signed by both Tenants and the Landlord and a copy of the power of attorney from the Landlord appointing him as the Landlord's Agent. The Landlord's Agent said this is proof there is a tenancy and he is acting for the Landlord. The

Landlord's Agent said he is requesting an order to enter the rental unit to inspect the unit and to complete a market evaluation.

The Tenants' Counsel said to allow the Landlord's Agent into the rental unit could be prejudicial to the Tenants as the ownership question is not resolved and nothing can happen with the property until that happens.

The Tenants' Counsel said in closing that this dispute is larger than a tenancy dispute and there is no tenancy or tenancy agreement from the Tenants point of view. As well any intrusion on the Tenants could be seen as harassment and until ownership of the property is proven no sale of the property can take place.

The Landlord's agent said in closing the Tenants' Counsel is only stating allegations and she has not proven any of the statements. He said on the other hand he has provided a current title search of the property in the Landlord's name and a tenancy agreement signed by the Tenants and the Landlord. The Landlord's agent said this proves a tenancy exists. The Agent requested an order to enter the rental unit on one of the following days September 7, 8 or 9, 2016 at 10:00 am for a period of 2 hours to inspect the rental unit and to show a realtor through the rental unit for the purpose of doing a market evaluation.

Analysis

Section 29 of the Act says: (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 accept the Landlord's evidence of a title search that the Landlord is the owner of the rental unit and the copy of the Tenancy Agreement between the Landlord and the Tenants to prove there is a tenancy between the parties with regard to this property. Pursuant to section 29 of the Act the Tenants do not have the right to withhold entry from the Landlord or the Landlord's Agent if proper notice is given to the Tenants.

Further I find the Landlord's Agents reasons for the inspection which are a condition inspection and a market evaluation of the property are both reasonable. Consequently I order the Landlord's Agent to provide the Tenant's with a proper 24 Hour Notice to enter the property for the purposes of a condition inspection and market evaluation. The Landlord's Agent has requested one of the following dates September 7, 8 or 9, 2016.

Further I Order the Tenants to accept the Landlord's Agent's request for entry to the rental unit for one of the dates of September 7, 8 or 9, 2016. If there is a delay in the Tenants or the Landlord's Agent receiving this decision and order then the Landlord's Agent is at leave to provide the Tenants with another 24 hour notice to enter the rental unit on a date that is mutually acceptable to the Tenants and the Landlord's Agent.

Conclusion

An Order for the Landlord's Agent and associates to enter the rental unit has been issued to the Landlord's Agent.

Further I order the Tenants 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: August 31, 2016

Residential Tenancy Branch

