



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMOS REALTY AND PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, LRE, FF

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; for an Order for the landlord to make repairs to the unit, site or property; for an Order to suspend or set conditions on the landlords right to enter the rental unit; and to recover the filing fee from the landlords for the cost of this application.

The hearing held on September 30, 2016 was adjourned as the tenant was in hospital. The hearing reconvened today by conference call and was attended by the tenants and the landlord's agent. The parties were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?
- Are the tenants entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2016; however, the tenants were not able to take possession of the unit until July 04, 2016 and the rent was prorated accordingly. Rent for this unit is \$900.00 per month due on the 1st of each month. The tenants paid a security deposit of \$450.00 on July 01, 2016.

The tenant NS provided testimony throughout this hearing and is thereafter referred to as the tenant. The tenant testified that the landlords decided to list this house for sale not long after the tenants moved in. The landlord's agent (agent) informed the tenant by text message that a realtor would be coming the following evening. The tenant declined to provide access as proper notice had not been provided. The agent then responded with a text to establish an extended schedule of viewings for two days a week eight hours a day. The tenant testified that he did not agree to this schedule and posted notices on both the front and back door to inform any realtors that they were not allowed to access the property as notice had not been provided.

The tenant sought a discussion with the agent concerning fair access to the property. On August 04, 2016 the tenant received a letter from the agent which was posted on the back door of the unit advising the tenant of a viewing schedule for August 10, 13, 17, 20, 24, 25 and 27, 2016 between the house of Noon and 8.00 p.m. for the purpose of bring forth a contract of purchase and sale for the property owners. The letter also

stated that from time to time, should the need be there, the tenant would receive further notices of showing.

The tenant testified that this unilaterally determined schedule to allow the landlord access to the unit for the purpose of showing the unit was unreasonable and would disturb the tenants' right to quiet enjoyment of their rental unit. The hours provided for entry are unreasonable and if the tenant allowed this type of access the landlord would access the unit for 56 hours over the identified 18 day period or 13 percent of the tenants full time within the unit. The tenants may even be subjected to further viewings. The tenant agreed that these scheduled viewing did not take place as proposed by the landlord but the tenant wants to have the parties agree on a schedule for viewings moving forward.

The tenant testified that in the first 23 days of November, 2016 the landlord scheduled eight viewings five of which took place after November 10. If viewings are 30 minutes long this would allow for four hours of viewings on scheduled days. The tenant proposed that the landlord may schedule viewings in a four hour block two days a week. The tenant proposed four hours on a Wednesday and Saturday each week.

The landlord agreed to schedule viewings between 2.00 p.m. and 6.00 p.m. on Wednesdays and Saturdays each week. The tenant agreed to this schedule being put in place.

The tenant testified that the landlord has also sent a letter for an extend time frame to look at the property between 09.00 a.m. and 5.00 p.m. The tenants testified that this is again an intrusion on their time and the tenant seeks a proper notice of entry for any inspections detailing the exact time and date of entry so the tenants are not waiting all day for the landlord to come to inspect the property.

The agent testified that in the tenancy agreement addendum the landlord has a right to schedule an inspection every three to four months and drive by inspections on a

continual basis. The agent testified that this addendum also states that the tenant will receive written notice via email or mail not less than 24 hours or more than 30 days before the landlord enters to do an inspection. The inspection shall take place between 9.00 a.m. and 5.00 p.m. whether or not the tenant is present. The agent testified that the tenant has signed and agreed to this when he signed and initialed the tenancy agreement and addendum.

The tenant testified that the landlord has failed to repair the oven which is essential to the tenants' enjoyment of the rental unit. The tenant contends that the oven is old and did not work correctly when they first moved into the unit. The tenant sent a work order to the landlord's agent's office on July 07, 2016. The work Order states that repairs will be made within 30 days but nothing happened. The tenant contacted the agent who said they had not received the work order. The tenant then sent them a copy of the order again. On August 12, 2016 a repair man came out to look at the oven and replaced a bake element. The oven continued to work for approximately six weeks and then it stopped working again and started making loud clicking noises. The tenant did some on line research and it appeared that the timing mechanism is not working. The company who made this oven are no longer in business.

The tenant submitted a new work order to the landlord's agents office on October 24, 2016. The landlord has now had a full 30 days to repair the oven and has arranged for a repair man to come out today to look at the oven again. In the interim the repairman did contact the tenant and they went through a process over the phone of trying to get the oven to work. The repairman told the tenant that he thought the oven would need to be replaced. The tenant's concern is if this is determined by the repairman today will it then take the landlord another 30 days to replace the oven which would leave the tenants without an oven over Christmas. The tenant seeks an Order for the landlord to repair the oven or replace it as soon as possible.

The tenant testified that the back door is a sliding door. On July 05, 2016 the tenant contacted the agent with a complaint about the back door as the door could not be secured. A repairman did arrive a few hours later and informed the tenant that he had

been out to look at the door several times after complaints had been made and had determined that the door needed to be replaced. The repairman also said he had notified the agent about this and would do so again. A temporary repair was made at that time.

The tenant testified that the door is still extremely difficult to open and difficult to lock and unlock from the outside. This has caused some cracking on the handle which the tenant wants noted for future reference in the event the handle breaks off and the landlord seeks to make the tenant libel for this damage. The tenant feels the defective door compromises the security of the unit as the door appears to have been put in backwards and a stick cannot be used on the inside to prevent the door being opened. The tenant testified that the agent's own daughter had a problem unlocking the door from the outside and this bent her key. Further to this the tenant testified that the door screen will not remain on its track and has now been removed to the garage by the tenant. The tenant seeks remedy from the landlord to repair or replace the door.

The landlord testified that with regard to the stove repair; the first time it was repaired it was because the tenants did not know how to use the timers on the stove correctly. The repair man educated the tenants about this and did replace a stove element. The clicking noise heard from the stove now sounds like the timer mechanism. If the repairman cannot repair the stove then it is out of the agent's hands as to the time frame that the stove can be replaced. The landlords must authorise this sort of expenditure. The agent does not believe that the Arbitrator has the authority to set a time frame for replacing the stove.

The agent testified that the door lock on the door was replaced and does work. The agent testified that he has opened the door numerous times and has not noticed a problem with it. If the tenants cannot handle the door they still have another access into the unit through the front door.

The tenant asked the agent when he was last at the unit opening the door as no notice had been provided to the tenant. The agent responded that the unit has been in their rental pool for a number of years and the agent did send a repairman out as the tenants said it was an emergency. The tenant asked the agent when he last saw the door as his maintenance man said it needed to be replaced and his own daughter had issues and bent the key. The agent responded he was last at the house when the tenants moved into the unit and did not have a problem opening or closing the door. The tenant asked the agent to provide specifics about the door repair. The agent responded that the repairman said the lock was replaced.

The tenant argued that everyone who tries to open the door has a problem. The agent has not been out to look at the door or attempted to open it. It is not just the lock the door is extremely hard to slide and gets stuck on its track. This is causing the handle to break.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows: with regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and for an Order to suspend or set conditions on the landlord's right to entry the rental unit. During the hearing the parties agreed upon a schedule for viewings of the unit. As the parties reached this agreement then I have documented that agreement here pursuant to s. 63 of the *Act*. The parties agreed as follows:

- The parties agreed that a schedule for viewings for the purpose of selling the property may take place on each Wednesday and Saturday from 2.00 p.m. to 6.00 p.m. the landlord's agent agreed to abide by this viewing scheduled and will not schedule viewings outside this time period without the tenant's permission.

With regard to other entry into the unit by the landlord's agent; 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).

The tenancy agreement contains a clause in which the landlord has written that "the landlord will perform property inspections every three or four months. The tenant shall receive written notice via email and or mail in accordance with the landlord tenancy Act of not less than 24 hours' notice or more than 30 days' notice before the landlord enters

the residence to do the inspection. The inspection shall take place between the hours of 9.00 a.m and 5.00 p.m whether the tenant is present or not.

I find that two of the statements contained in this agreement are contrary to the Act. 1) Written Notice of Entry may not be provided by email. The Act states it must be in writing and therefore email is not a recognised form of providing written notice. Furthermore, s. 29 of the Act states that the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. This does not mean that the landlord can enter any time between 8.00 a.m. and 9.00 p.m. it means the landlord may provide a time of entry between these time frames and not expect the tenant to block out the entire day waiting for an inspection to take place.

I therefore Order the landlord to comply with the Act and ensure a time of entry is provided when inspections are due to take place or for any other entry other than the agreed upon schedule for viewings documented above.

With regard to the tenant's application for an Order for the landlord to make repairs; I find the tenants' stove failed to work when they first moved into the unit on July 01, 2016. This stove was not repaired until August 12, 2016 despite two repair orders being sent to the landlord's agent's office. I am satisfied that the stove stopped working again six weeks later and from then until today's date the landlord did not organise a repair leaving the tenants without a stove even though one is included in their tenancy agreement.

It is not acceptable for the landlord to expect the tenants to wait any further time for the repair to the stove. The agent questioned my authority in making Orders to replace the stove, I direct the agent to s.62(3) of the Act which states:

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or

tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Consequently If the stove cannot be adequately repaired by the repairman today then I Order the landlords to either adequately repair or replace the stove by December 10, 2016. If the landlords fail to do so the tenants are at liberty to file a claim against the landlords for compensation for the loss of this cooking facility from the start of their tenancy and any period thereafter.

With regard to the tenant's application regarding the back sliding door. I am satisfied on a balance of probability that the tenants have been encountering some difficulties with this door. The agent did send a maintenance man out as soon as he was informed that the lock was faulty and a repair was made at that time. The tenants have a right to be able to enter and leave the unit through this door and as I am satisfied there continues to be issues with the door then I Order the landlord or his representative to attend at the unit, to inspect the door and to ensure any necessary repairs are carried out to ensure the door can be easily locked and unlocked and to ensure the door operates as it is designed to do or to replace the door. The landlord or his representative must attend at the unit to inspect the door by November 30, 2016 and if repairs or replacement is required then the landlord must make repairs or replace the door by the end of December, 2016. If the landlord fails to do so the tenant is at liberty to file a new application for repairs or replacement and any compensation upon proof of the landlords' non-compliance with this Order.

As the tenant's application has merit I find the tenant is entitled to recover the filing fee of \$100.00 from the landlord pursuant to s. 72(1) of the *Act*. The tenant may deduct that amount from their next rent payment when it is due and payable to the landlord.

Conclusion

An agreement has been reached regarding a schedule for viewings of the unit for the purpose of selling the unit. This settlement agreement was reached in accordance with section 63 of the *Act*. The parties are bound by the terms of this agreement. Should either party violate the terms of this agreement, it is open to the other party to take steps under the *Act* to seek remedy.

I Order the landlord to comply with s. 29 of the *Act* regarding proper Notice of Entry to the rental unit.

I Order the landlord to ensure the oven is adequately repaired or replaced by December 10, 2016.

I Order the landlord or his representative to attend the unit, inspect the sliding door and if necessary effect repairs or replacement of the 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: September 30, 2016

Residential Tenancy Branch