



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARSON ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LAT, OLC

Introduction

This hearing was scheduled for a teleconference call to deal with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement; and, authorization to change the locks to the rental unit.

At the commencement of the hearing only the tenant and her Advocate were present. I heard that the hearing package had been sent to the landlord via registered mail on November 10, 2016 and delivered on November 16, 2016. I was provided a registered mail tracking number as proof of service. I was satisfied that the landlord had been sufficiently served with notification of this proceeding and continued to hear from the tenant without the landlord present.

I noted that I had not been provided any evidence or documentary submissions with this Application except for limited information provided in the "details of dispute" box on the Application itself. The tenant and her Advocate confirmed that they had not submitted any evidence or other documentation in support of the Application.

At approximately 7 minutes after the hearing commenced the landlord's agent connected to the teleconference call and explained that he had difficulty making the telephone call. I informed the landlord as to what I had heard up to that point and the hearing continued. The landlord stated that he had submitted evidence for this proceeding two days prior to the hearing date. The landlord acknowledged that he had not served it upon the tenant. I informed the landlord that his submission was very late, as his time limit for submitting a response is not less than seven (7) days before the hearing and must also be served upon the tenant. Accordingly, I did not consider any documentation submitted by the landlord.

I confirmed with the landlord's agent that he had a copy of the tenant's Application before him. However, as the hearing progressed it became apparent to me that the landlord came unprepared to deal with the issues identified on the Application but came prepared to deal with complaints about the tenant's conduct and eviction of the tenant. The landlord's agent explained that he had been provided a one page summary of issues from his employer to deal with at the hearing but that it was not the tenant's Application. I proceeded to review the issues raised by the tenant on her Application for the landlord's agent's benefit.

Since the tenant was requesting orders for compliance and authorization to change the locks, I determined it appropriate to make further enquiries as to the status of this tenancy as it would be unnecessary to issue orders if the tenancy has ended. The landlord's agent testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on or about October 25, 2016. The tenant denied receiving a 1 Month Notice but acknowledged receiving a letter from the landlord on or about that date. Then the tenant and her Advocate indicated that they had submitted a copy of a letter as evidence for this proceeding, which was inconsistent with their earlier testimony that no evidence had been submitted. I found it unclear as to whether the tenancy has ended pursuant to a 1 Month Notice and I continued to consider the tenant's requests as filed.

Approximately 30 minutes into the hearing another caller appeared. This person refused to identify herself and stated that she wished to provide information about the tenant anonymously. When I informed the caller that would not be permitted the caller became angry and proceeded to try to shout out information despite my instructions to stop. The caller eventually hung up and I have disregarded her comments.

Further exacerbating was the conduct of the parties. Both parties attempted to introduce matters not before me. I informed the parties a number of times that the only matters before me are those identified on the Application. In addition, the tenant had a tendency to provide extraneous information and the landlord's agent presented as sarcastic and bristly demeanor.

Despite all of the aforementioned challenges, I was able to gather enough information from both parties to make a decision in the matters before me.

Issue(s) to be Decided

1. Has the tenant established that it is necessary to issue orders to the landlord to compliance to the landlord?
2. Has the tenant established that it is appropriate in the circumstances to authorize her to change the locks to the rental unit?

Background and Evidence

The tenancy commenced May 1, 2016 on a month to month basis. The tenant is required to pay rent of \$660.00 on the first day of every month.

The tenant seeks authorization to change the locks to the rental unit and for the landlord to not have a copy of the key. The tenant also seeks an order that would require the landlord to cease bullying her.

The tenant asserted that the landlord's agent had entered her rental unit unlawfully on two occasions: May 21, 2016 and September 12, 2016. Below, I summarize the parties' respective positions concerning these allegations.

The tenant testified that on May 21, 2016 she heard knocking at the door. As she was getting out of bed the landlord entered her rental unit and proceeded to get angry about how she had parked her vehicle. The tenant claimed that the landlord's agent pointed his finger at her and told her she was lucky to have obtained the rental unit for such a low amount of rent. The tenant stated that the landlord also told her that if her car is broken down that he would have it towed. The tenant's testimony as to how she got the landlord to leave her unit was unclear. Rather, she described how she proceeded to go to the parking lot to view how she had parked her car.

The tenant testified that on September 12, 2016, just after she finished cooking supper, she heard banging at her door. She asked "who is it?" and the landlord's agent orally responded and then proceeded to use his key to open her door. The tenant claimed that the landlord's agent proceeded to yell at her about cooking so late in the evening. The tenant stated that she told the landlord he did not have the right to enter the rental unit since it was not an emergency situation and then the tenant living across the hall came over and told the landlord the same thing.

The tenant stated that when the landlord speaks to her he uses profanity, he acts aggressively and that she is scared of him. As a result, she avoids going home until it time for bed.

In response, the landlord's agent denied opening the tenant's door and entering her unit on May 21, 2016. The landlord's agent acknowledged that he had a conversation with the tenant about the parking of her vehicle in July or August 2016.

The landlord also denied using his key to open her door on September 12, 2016.

The landlord explained that he is aware of the limited circumstances when he may enter a rental unit and proceeded to describe how he has to have consent or give notice to enter; otherwise, he will only open a rental unit door in the event of an emergency.

Considering the disputed verbal testimony before me I asked the tenant whether the neighbour tenant who was present on September 12, 2016 was available to be called as a witness. The tenant responded by stating that the neighbour did not want to be involved as a witness and was out of town.

Analysis

As the applicant, the tenant bears the burden to prove that the landlord has violated the Act, regulations or tenancy agreement as she described. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further

evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I was only provided disputed verbal testimony. Both parties asserted that the other was being untruthful in their testimony. I made no determination that one party was more credible than the other. The tenant asserted that there was a witness to the events of September 12, 2016 but I did not have the benefit of hearing from that witness.

In light of the above, I found the dispute verbal testimony was insufficient to satisfy me that the landlord violated the Act by unlawfully entering the rental unit as described by the tenant. Therefore, I dismiss her application.

It appeared to me that the landlord is aware of the limited circumstances when he may enter a rental unit; however, for added certainty I have reproduced section 29 of the Act below for the parties' further reference:

Landlord's right to enter rental unit restricted

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).

As I informed the parties during the hearing, should the landlord violate section 29 in the future, the tenant is at liberty to reapply.

Conclusion

The tenant's application has been dismissed.

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: January 13, 2017

Residential Tenancy Branch