



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes LAT LRE OLC MNDCT

#### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to change the locks to the rental unit
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement
- to suspend or set conditions on the Landlord's right to enter the rental unit
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement

Both sides were represented at the hearing. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord confirmed that they received the Tenant's application package as well as all evidence the Tenant referred to in the hearing.

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.

#### Preliminary and Procedural Issues

The Tenant is seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues the Tenant applied for, and based on the evidence before me, I find the most pressing issues in this application are related to the Tenant's claims regarding the Landlord's access to the rental unit, and her allegations surrounding her safety and security. Further, I find there was insufficient time to properly hear the Tenant's claim for monetary compensation. As a result, I exercise my discretion to dismiss, with leave to reapply, the following grounds on the Tenant's application:

- a monetary order for compensation for damage or loss under the *Act*.

#### Issues to be Decided

- Is the Tenant authorized to change the locks to the rental unit?
- Is the Tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?
- Should there be conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

The Tenant testified that the Landlord's resident caretaker and regional manager have unlawfully used the key fob and entered her rental unit. The Tenant stated that she wants the Landlord to respect her rights as a tenant, and give proper written notices when they need to access her rental unit.

The Tenant has also asked that only females be allowed access, by the Landlord, to her rental unit. The Tenant stated that she does not feel safe having the male caretaker, CT, or the other male regional manager, GA., enter her suite for any reason. The Tenant is requesting that neither of these individuals be allowed into her unit because she does not feel safe. This is in part due to their gender, and their disregard for the rules and requirements surrounding accessing her rental unit, and also their misuse of the master fob. The Tenant stated that CT and GA both have master fobs and this gives them access to any rental unit in the building.

The Tenant testified that there were 3 main incidents where there was misuse of the master fob. She testified that they are as follows:

Incident #1 – May 14, 2016 – The Tenant testified that there was a master fob given out by the resident caretaker, CT, to a different occupant while he moved. The Tenant stated that she felt unsafe because this master fob was not handled properly, and the other occupant should not have had such unrestricted access to the entire building. The Tenant provided a witness letter to support that CT gave out the fob, as she has described.

Incident #2 – August 9, 2016 – The Tenant testified that CT did not give 24 hour written notice to enter her rental unit to repair her refrigerator. The Tenant stated that CT personally acknowledged to her that he had come into her unit to fix her refrigerator while she was out and he apologized.

Incident #3 – September 27, 2017 – The Tenant testified that both CT and GA entered her unit without proper notice. She further stated that she got a 24-hour notice to enter her rental unit from the Landlord for the annual inspection but this notice did not have a specific time. Rather, it only listed that they would be entering sometime in the "pm". The Tenant stated that she heard a knock at the door around 11:30 am, but she did not answer. Subsequently CT and GA entered her unit and appeared surprised to see her. The Tenant stated that they said they would come back at 1:30 pm but this whole process left her feeling violated and uneasy.

The Landlord stated that they acknowledge the incidents on May 14, and August 9 of 2016, and they apologized for the incidents. The Landlord stated that they responded by providing further training to the resident caretaker to prevent this from happening again.

With respect to the incident on September 27, 2017, the Landlord stated that they gave 3-4 days' notice that they would be entering her unit for annual inspections. The Landlord stated that they indicated on the notice to enter that they would come in the afternoon, and she apologized that the caretaker came at

11:30 am instead, and disturbed the Tenant. The Landlord stated that she is willing to try to accompany any male entering the Tenant's rental unit to the best of her abilities but this may be difficult, especially if there is an emergency.

The Tenant has requested to be the only one who has a key to her unit, and if access is required, she would need to be consulted.

### Analysis

First, I acknowledge that the Tenant is seeking authorization to change the locks to the rental unit so that she can have exclusive access to it because she does not feel safe or secure. However, as discussed during the hearing, the Landlord is entitled to retain a key to the rental unit, which is particularly important in emergency situations. It was made clear that her concerns on this matter were best addressed under the remaining grounds she applied under, such as the Landlord's lawful and proper access to her unit.

With respect to incident #1, the Landlord acknowledged that the caretaker erred in giving out the master fob on May 14, 2016. I note that the Tenant stated that this incident made her feel unsafe and this practice jeopardized the security of all tenants in the building. Considering all of this, I order the Landlord to stop giving out master fobs to other residents for any purpose, or to anyone other than an agent of the Landlord.

With respect to incident #2 on August 9, 2016, I find the Landlord failed to comply with section 29 of the Act, and provide the Tenant with proper notice that they were going to enter her unit to repair her refrigerator.

Further, with respect to incident #3 on September 27, 2017, the Landlord should have been more diligent with respect to the time they entered the Tenant's rental unit. Both parties agree that the written notice the Landlord provided to enter the rental unit indicated that the inspection was to occur in the pm, but the caretaker came at 11:30 am and let himself in. I find it important to note the following portion of the Act:

### **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).

I order the Landlord to comply with this section of the *Act* and to properly issue and utilize written notices, as outlined above when requiring access to her rental unit. I also order the Landlord to adhere to the times provided on the notice to enter in order to minimize any impact on the Tenant.

Although the Tenant has requested that, in the future, only women be allowed access to her rental unit because she does not feel safe around CT and GA, I dismiss this portion of the Tenant's application because the Landlord is entitled to have a male or a female agent conduct work on their behalf, as they see fit. I have no authority to disallow male agents of the Landlord from entering her unit.

In summary, while I have ordered the landlord above to follow the *Act* in regards to entry of the tenant's rental unit, I find the 2 incidents where the landlord entered the unit were not significant infractions and I therefore dismiss the Tenant's request to change the locks to the rental unit so that she can have exclusive access.

Further, I dismiss the Tenant's request to only allow female agents of the Landlord into her rental unit or to restrict CT or GA from entering her unit to carry out their duties as agents of the Landlord. That being said, I order the Landlord, or any agent, to comply with section 29 of the *Act*, and to pay close attention to the requirements under the *Act* with respect to entering a rental unit with an active tenancy in place.

### Conclusion

I dismiss the Tenant's request to change the locks to the rental unit so that she can have exclusive access. I dismiss the Tenant's request to only allow female agents of the Landlord into her rental unit or to restrict CT or GA from entering her unit to carry out their duties as agents of the Landlord. I note however, that should the landlord fail to comply with the orders set out in this decision the tenant may submit an Application for Dispute Resolution seeking compensation for the landlord's failure to comply.

I order the Landlord to comply with section 29 of the *Act*.

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: November 21, 2017

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Residential Tenancy Branch