



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, CNC, FF

Introduction

This hearing was convened in response to an application and an amended application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order restricting the Landlord’s entry - Section 70;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order cancelling a notice to end tenancy - Section 47; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. During the hearing the Parties reached a mutual agreement to resolve the notice to end tenancy as set out below. The Parties confirmed that this agreement was made on a voluntary basis as a full and final settlement of this matter. The remaining matters are set out below the agreement.

Agreed Facts

The tenancy started on September 1, 2014. Rent of \$1,755.00 is currently payable on the first day of each month. At the outset of the tenancy the Landlord collected \$825.00 as a security deposit. On May 31, 2018 the Tenants were given a one month notice to end tenancy for cause (the “Notice”). The Tenants disputed this Notice.

Settlement Agreement

The Parties mutually agree as follows:

- 1. The tenancy will end 1:00 p.m. on July 31, 2018;**
- 2. The Tenants will move out of the unit no later than 1:00 p.m. on July 31, 2018; and**

3. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute as recorded above. In order to give effect to the agreement I grant the Landlord an order of possession effective 1:00 p.m. on July 31, 2018.

Remaining Issue(s) to be Decided

Are the Tenants entitled to a restriction on the Landlord's right of entry?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant states that the Landlord or its contractors have made multiple entries without notice. The Tenant states that because of the Landlord's behavior there is a bad relationship between the Parties and the Tenants feel harassed and insecure. The Tenant states that they want to have peaceful enjoyment of the unit for the short time remaining in the unit and ask for an order restricting the Landlord's entry to the unit until after the end of the tenancy.

The Landlord states that they have been communicating with the Tenants by text or other electronic means throughout the tenancy and had been giving the Tenant's notice of entries by texts. The Landlord states that there were no objections until the Landlord's contractors delivered the roof shingles. The Landlord states that the Tenant wanted to know when the contractors would be attending the unit and as the Landlord was busy the Landlord told the Tenant to contact the contractors themselves to find out. The Landlord states that there is no current apparent reason for the Landlord to be at the unit before the end of the tenancy other than for inspection purposes to ensure that the tarp remains covering the roof and no leaks are coming into the unit. The Tenant states that the roof was covered by a professional company and there are no leaks. The Tenant is concerned that the Landlord will use any excuse to enter the unit using the excuse of an emergency and does not trust that the Landlord to stop harassing the Tenants before they leave.

The Tenant states that they have no other requirement for the Landlord's compliance and ask for clarification that they remain at liberty to make a future application seeking damages or costs for repairs made by the Tenants.

Analysis

Section 29(1) of the Act provides 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:

- (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.

Section 70 of the Act provides that a landlord's right to enter a rental unit as set out above may be suspended by order. Given the Landlord's evidence that the Tenant was instructed to determine entry dates and times from the Landlord's contractors because the Landlord was busy I find that the Landlord has acted negligently towards the Tenants' right to peaceful enjoyment. Considering the undisputed evidence that the roof has been covered by a professional company and that there are no leaks inside the unit, I find that there are currently no compelling reasons or other emergencies that would require the Landlord to attend the unit for inspection purposes prior to the end of the tenancy. Given the Landlord's evidence that entries to the unit were made without the appropriate written notice, considering the Tenant's persuasive evidence that they are feeling harassed by the Landlord and given that the tenancy will end very shortly, I find that the Tenant is entitled to an order restricting the Landlord's entry. I therefore order the Landlord to not enter the unit for any reason unless the Tenant expressly

gives permission to the Landlord for such entry or the Tenant informs the Landlord of an emergency that would require the Landlord's entry into the unit.

As the Tenants did claim any compensation or monetary amount either in the application or the amended application I note that the Tenants remain at liberty to make an application claiming compensation or losses.

As the Tenants' application has had merit on at least one claim I find that the Tenants are entitled to recovery of the **\$100.00** filing fee.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on July 31, 2018.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that 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: July 20, 2018

Residential Tenancy Branch