Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACE ARCH SENIORS CITIZENS HOUSING SOCIETY PAM (PEACE ARCH MANOR)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LAT LRE OLC MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order permitting the tenant to change the locks to the rental unit; an order limiting or setting conditions on the landlord's right to enter the rental unit; and an order that the landlord comply with the *Act,* regulation or tenancy agreement. The tenant also filed an amended application seeking a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

An agent for the tenant attended the hearing and applied for an adjournment on behalf of the tenant to August 19, 2018, saying that the tenant is ill, but does not know what's wrong. He last saw the tenant a week or so ago, and the tenant called the agent asking that he attend today to adjourn the hearing to the same date as another hearing scheduled with the parties. An agent of the landlord society attended the hearing with Legal Counsel who opposed the adjournment stating that this is the 4th hearing, and the next hearing is actually scheduled for August 16, 2018 which will be the 5th hearing.

The tenant joined the conference call hearing 25 minutes late and stated that she has very high blood pressure, and the hearing should be joined with the hearing scheduled in August. Counsel for the landlords argued that it is substantially unlikely that the tenant will be successful with the application today, in that the evidence does not support any of the applications made by the tenant.

During discussions with the parties I determined that the tenant was able to remain in attendance, and did not seem ill at all, and was very much able to present her case, and I denied the application to adjourn.

Also, during the course of the hearing, Counsel for the landlord stated that all of the tenant's evidentiary material was provided late, and that the landlord's evidence was filed before the tenant's evidence. The tenant replied that she suffers from anxiety and 2 of the

landlord's agents affected the tenant's ability to function. I do not accept that it's the landlord's fault that the tenant has not filed the evidentiary material on time, and I decline to consider the late evidence of the tenant.

The tenant was also queried about the amended application claiming $35,000.00 as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and how it relates to the original application. The tenant replied that the monetary application is for continuous behavior and conduct of the landlord's agents, and that it's about the principle. The landlord's agents are responsible to ensure that the building complies with the *Residential Tenancy Act.*

The tenant filed the original application on May 29, 2018 and the amendment on June 26, 2018. I do not find it to be appropriate to amend an application to include the maximum amount that could possibly be awarded to a party under the *Residential Tenancy Act* based on principle. There has been no determination that the landlord has failed to comply with the *Act,* regulation or tenancy agreement, and I am not satisfied that any such orders would relate to the original application. Therefore, I dismiss the tenant's amended application for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement with leave to reapply. I make no findings of fact or law with respect to the merits of that matter.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that the tenant should be permitted to change the locks to the rental unit?
- Has the tenant established that the landlord's right to enter the rental unit should be ordered to be conditional or limited?
- Has the tenant established that the landlord should be ordered to comply with the *Act,* regulation or tenancy agreement, and more specifically by giving written notice to enter the rental unit or allow contractors into the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on August 1, 2013 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is currently $389.50 per month payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a seniors' complex that contains 79 units.

The tenant further testified that she had sent an email to the landlord about lack of heat and repairs required, and on April 16, 2018 one of the landlord's agents (MM) showed up at the tenant's door with a plumber. The landlord's evidentiary material says the landlord had to make an emergency call-out to the plumber, but that's not true; the plumber was already in the building. The tenant didn't answer the door, but found an email later saying they were at the door and that the tenant would be charged $100.00 for another call-out.

The next day while the tenant was out, another agent of the landlord (DR) entered the rental unit with a plumber. The tenant saw them upon her return and the landlord's agent said she had just left the tenant's rental unit, and due to no heat, it was an emergency. The tenant testified that her email of lack of heat did not say it was an emergency. The tenant seeks an order limiting or setting conditions on the landlord's right to enter the rental unit.

In cross-examination the tenant testified that an email the tenant sent to the landlord dated December 19, 2017 and copied to BC Housing and the MLA stated that no one had responded the heater complaints and it is considered an emergency, however that was the 4th email and the landlord wasn't responding. It meant that it would be considered an emergency, meaning the tenant would be permitted to make the call-out to a plumber, and the email was to put the landlord on notice of that.

The tenant also testified that 2 other tenants in the building have master keys for the building.

The landlord's agent (DW) testified that she is presently the President of the Board of Directors of the landlord society and has been involved with the society for over 23 years. Policies are given to tenants with the tenancy agreement, including Section 29 of the *Residential Tenancy Act* regarding the landlord's right to enter the rental unit.

On April 16, 2018 the tenant sent an email to the landlord and the landlord's agent was surprised that it said there was no heat in the rental unit, and told the other agent of the landlord to get ahold of a plumber. The plumber dropped everything and arrived immediately. He was not on the property at the time, however he stayed for other jobs. No heat was a problem and there was also an issue with a leaky tap in the tenant's email. This was the first time that the tenant had indicated that there was no heat, although the landlord had someone there in 2016 about the tenant's complaint of little heat in the rental unit.

The other agent of the landlord (MM) advised that the tenant refused entry and arrangements were made for the plumber to return the next morning. Again, the tenant didn't answer the door. However, the tenant's email indicated that it was an emergency being now 2 days with no heat, and the landlord's agent and the plumber entered the rental unit. The landlord's agent stayed with the plumber, who checked everything to ensure it was working. The window and door were wide open. They were there for about a half hour, and the tap was repaired.

The plumber and the landlord's agent met the tenant in the common area of the rental complex and the tenant was advised that they had just left her unit and fixed the tap and looked at the hot-water heat. The tenant got upset and confrontational with the plumber and then wanted the plumber to go back to her unit.

A copy of the plumbing Invoice has been provided for this hearing as well as a letter from the plumber requested by the landlord's agent. Nothing was found wrong with the heating system, and the plumber suggested that the tenant close windows and the door.

With respect to master keys, the landlord's agent testified that a lady who has been a resident in the complex for 18 years has a key in case of dire emergencies for a person to contact. Another fellow was letting in some contractors for the landlord. Both have authority from the Board of Directors to have such keys, and they have to contact the landlord before using them.

The tenant submits that the landlord has ignored emails, giving no response to the tenant, and this was not an isolated incident. The only thing that has been repaired is the tap. The landlord claims that the plumber was an emergency, but that is not indicated in the emails. The tenant feels that her rights have been violated, and submits that the tenant needs to know that whether she is home or not, no one enters the rental unit.

The landlord's legal counsel submits that emails in December and April mention lack of heat, then no heat. No heat was an emergency in the opinion of the landlord.

Analysis

Firstly, with respect to the tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit, the *Residential Tenancy Act* contemplates that emergencies exist, and permits a landlord to enter for emergencies. Section 29 is a policy of the landlord and forms part of the tenancy agreement. I am not satisfied that the landlord has breached that Section given that the tenant included the MLA and BC Housing in her request for someone to look at the heat. The application is dismissed.

With respect to the tenant's application for an order permitting the tenant to change the locks to the rental unit, in order to be successful the tenant must establish that the landlord has violated the tenant's right to privacy. There is no question that the landlord's agent entered with a plumber, however given the finding that the landlord had a right to enter fully believing there was an emergency, illegal entry by the landlord has not been established. Also, there is no question that others have a master key but absolutely no indication that either one of them has used the key. I dismiss the tenant's application to change locks.

Since the tenant has not been successful with either of the applications, I find no reason to issue an order that the landlord comply with the *Act,* regulation or tenancy agreement, and the application is dismissed.

Conclusion

For the reasons set out above, the tenant's amended application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The balance of the tenant's application is hereby dismissed without leave to reapply.

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 26, 2018

Residential Tenancy Branch