Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

The tenant filed an application for dispute resolution on August 13, 2018, under the *Residential Tenancy Act* (the "Act") and seeks an order for the landlord to comply with the Act, the *Residential Tenancy Regulation* (the "Regulation"), or the tenancy agreement, pursuant to section 62(3) of the Act.

This is my decision in respect of the tenant's application.

A dispute resolution hearing was convened on October 2, 2018, and the tenant and the landlord's agent attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents or evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application is considered in my decision.

Preliminary Issue

The tenant twice objected to the landlord's agent being present at the hearing, objecting on the ground that the issue he has is with another individual (also an employee of the landlord). I advised the tenant that a landlord is entitled to have anyone attend as its agent, and that while I would note the tenant's objection in my decision, we would proceed with the hearing. The tenant objected a third time to the landlord's agent being present, at which point I advised the tenant that we could either proceed with the hearing or that he could withdraw his application. We proceeded with the hearing.
On this issue, I note that section 74(4) of the Act states that "A party to a dispute resolution proceeding may be represented by an agent or a lawyer." As the landlord is a named party to this proceeding, it is therefore entitled under the Act to have an agent of its choosing to represent it.

Issue

Is the tenant entitled to an order for the landlord to comply with the Act, the Regulation, or the tenancy agreement?

Background and Evidence

The tenant testified that the landlord has been serving illegal notices of entry on him for some time, dating as far back as when he moved in, several years ago. He argued and submits that the notices are not legal and not in accordance with the Act.

In some cases, he states, the landlord gives him two days of notice while in other cases, as little as a day. The notices are for various inspections, including to check a smoke alarm. Instead of providing a specific time that the landlord intends to enter the rental unit, the notices provide a range of times. The range in some cases is for the entire day during business hours. That is, from 8:00 a.m. to 4:00 p.m.

The tenant further testified that he has communicated with the landlord over the phone and in writing in regard to the unacceptable wide range of time, but that the landlord has not responded to, or acknowledged, the issue.

Further issues related to the notices are that, even when a range of time is provided, the landlord does not end up attending. Recently, for example, the landlord was to conduct a general inspection, but the inspection was a "no show."

The landlord testified that it is industry and landlord practice to provide a range of times. In managing a complex of 400 units with over 1,000 residents, it is simply impossible from an operational perspective for the landlord to give a specific time. There are multiple issues that prevent a specific time from being given. One issue is that the landlord hires contractors to do inspections, and the times will vary for each inspection. While the landlord would like to provide a more specific time of entry, they simply cannot, given the number of rental units.
Finally, the landlord testified that this tenant is the only tenant who has any issues with the notices of entry and the manner in which they are issued.

Submitted into evidence by the tenant were a Notice of Entry from the landlord. The Notice was served on August 9, 2018 and noted that the purpose for entering the rental unit was for a smoke detector and a fire alarm inspection. The entry dates were for August 13 or August 14, 2018, with an estimated time of entry and duration of 8:00 a.m. to 4:00 p.m. (I note that the landlord did not state the duration of the entry.) The Notice also states that "Your presence is requested, although the Commission's Representative(s) or Agent will carry out his/her purpose whether or not you are in attendance."

Further submitted into evidence was a "Tenant Notification" dated August 28, 2018, which refers to work that had to be done for "fire alarm wiring issue to the speaker." The notice of entry was for August 29, 2018, between 10:00 a.m. to 4:00 p.m. This notification was sent to several rental units, one of which was the tenant's. The tenant disputed the manner of the inspection itself, briefly explaining the electrical work that would and would not be required, instead of "some idiot coming around" to look at it.

Also submitted into evidence were two Notices of Entry with entry dates of August 10-11, 2015 and August 21 and 22, 2013, respectively. As these notices are over three and five years old, respectively, issues in respect of these notices are outside the two-year limitation period under section 60 of the Act. Therefore, I will not consider them.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 29(1) and 29(1)(b) of the Act states 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: [. . .] at least 24 hours and not more than 30 days before entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose of 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

The tenant submits that the landlord's notices are not in compliance with the Act because they provide a range of time, versus a specific time. (The tenant commented, however, that he would be amendable to the time being a narrow range. For example, between 1 and 2 p.m.) In other words, he argues that a range of time (e.g., 8:00 a.m. to 9 p.m., inclusive) is not "a time." A time would be, for example, 8:30 a.m.

Merriam-Webster defines "time" as both "the measured or measurable period during which an action, process, or condition exists or continues" (the first definition), and as "the point or period when something occurs" (the second definition). In interpreting the two meanings of "time" as it would apply to the Act, a landlord's entry into a rental occurs both at a point in time (e.g., 4:10 p.m.) and while the landlord is physically inside the rental unit (e.g., 4:10 p.m. to 4:20 p.m.). Both meanings of time exist as it pertains to this section of the Act.

As such, that the landlord provides a range of time of the entry is consistent with, and in compliance with, the Act. Therefore, I find that the landlord's notices comply with the Act.

Further, while I appreciate that a wide open range of time is rather inconvenient to the tenant—he commented, "I have to wait around" and that sometimes the landlord does not bother showing up—he is neither required to be present at the time of entry, nor is the landlord required to take into consideration a time of entry when the tenant will be present, according to the Act.

The Notice of Entry of August 9, 2018, submitted into evidence reflects this, and notes that entry may be effected with or without the tenant being present in the rental unit. The landlord is required under the Act to provide a date and the time of entry, including a range of time of entry, and that is all. That the tenant chooses to wait in his rental unit for the landlord to attend is solely his choice.

Taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of demonstrating that the landlord has issued illegal notices of entry.

Conclusion

I hereby dismiss the tenant's application 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 of the Act.

Dated: October 2, 2018

Residential Tenancy Branch