



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, OLC

Introduction

This hearing dealt with the Tenant's application filed under the Residential Tenancy Act, (the "Act"), requesting an Order for the Landlord to comply with the Act, an Order authorizing the Tenants to change the locks to the rental unit, and an Order to suspend or set conditions on the Landlord right to enter the rental unit. The matter was set for a conference call.

One of the Tenants attended the hearing and was affirmed to be truthful in his testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he had personally served the Application for Dispute Resolution and Notice of Hearing documents to the Landlord on October 27, 2018. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the Act

The Tenant was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at 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.

Issues to be Decided

- Are the Tenants entitled to an Order for the Landlord to comply with the Act?
- Are the Tenants entitled to an Order authorizing the Tenants to change the locks to the rental unit?
- Are the Tenants entitled to an Order to suspend or set conditions on the Landlord right to enter the rental unit?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2018, that rent in the amount of \$1,800.00 was to be paid by the first day of each month, and the Landlord had been given a \$900.00 security deposit.

The Tenant testified that the Landlord is continually attending the rental unit unannounced and harassing the Tenants. The Tenant testified that the Landlord does not provide written notice before he attends the rental unit. The Tenant testified that he has asked the Landlord to at least send him a text message before the Landlord comes by, but that the Landlord refuses and is continually attending the rental unit unannounced.

The Tenant also testified that when the Landlord attends the rental unit, he walks around the back and on to their private deck without notice and looks inside of the rental unit through the windows. The Tenant testified that this is very upsetting and disturbing to him and his wife. The Tenant testified that he had asked the Landlord to stop doing this and just knock on the front door; however, the Landlord has refused and continues to access the back deck and look into their rental unit. The Tenant provided three pictures of the Landlord on their back deck and looking into the windows of their rental unit, into documentary evidence.

The Tenant testified that he and his wife have exclusive use of the back deck and that there is no reason for the Landlord to go back there, as they have always responded to his knocks at the front door of the rental unit. The Tenant also testified that from the back deck the Landlord has a full view into the rental unit, including the bathroom, which is very upset to his wife.

The Tenant testified that he is seeking permission to put a lock on the gate leading to the Tenants' private back deck and for permission to withhold the key for that lock from the Landlord.

The Tenant is also requesting that the Landlord is Ordered to comply with the Act by providing the required written notice to the Tenants before he enters the rental unit.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the undisputed testimony of the Tenant that the Landlord has repeatedly accessed the private back deck of the rental unit without providing written notice to the Tenants. Section 29 of the Act states the following:

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.

I find that the Landlord has breached section 29 of the *Act* by not providing written notice to the Tenants before accessing the private back deck of the rental property.

I also accept the undisputed testimony of the Tenant that when the Landlord access the back deck he watches the Tenants through the windows of the rental unit and that this action has been very disturbing to the Tenants. Section 28 of the Act states the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord breached the Tenants right to privacy, when the Landlord repeatedly and without warning accessed the private back deck and watched the tenants through the windows of the rental unit.

In order to protect the Tenants' right to privacy set out in section 28 of the *Act*, I find it necessary to restrict the Landlord's right to access the private back deck of the rental unit.

Director's orders: landlord's right to enter rental unit

70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted].

(2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Pursuant to section 70 of the *Act*, I suspend the Landlord's right to access the rental unit by the private back deck. In order to enforce this, I authorize the Tenants to install a key lock on the access gate to the back deck of the rental property.

Pursuant to section 70 of the *Act*, I also prohibit the Landlord from obtaining a copy of the key, for the lock to the back deck and from replacing this lock or by other means obtaining entry into the rental unit by the use of the back deck.

Additionally, I order that Landlord comply with the Act and provide the required 24 hour written notice to the Tenants before he enters any area of the rental unit, pursuant to section 29 of the Act.

Conclusion

I Order that Landlord is hereby suspended from accessing the rental unit through the back deck.

I Order that the Tenants are authorized to install a lock on the gate leading to their private deck and that they are not required to provide the Landlord with a copy of the key to the lock.

I Order the Landlord to comply with section 29 of the Act, by providing the required 24 hour written notice to enter the rental unit.

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: December 12, 2018

Residential Tenancy Branch