



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LRE, LAT, OLC, FFT

### Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord D.B. (the landlord), the Building Manager and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the outset of the hearing Landlord D.B. (the landlord) stated that Landlord L.B. is no longer with the company.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence which were sent by registered mail on November 08, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the Application and tenant's evidence.

The tenant acknowledged receiving the landlord's evidence which was sent by registered mail on November 30, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to authorization to change the locks to the rental unit?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Both parties agreed that this tenancy began on August 01, 2013, with a current monthly rent in the amount of \$757.00, due on the rent in the first day of each month. The landlord confirmed a security deposit in the amount of \$317.50 that they currently retain.

The tenant provided in evidence:

- Four copies of pictures showing a person, who is not the tenant, in the rental unit;
- A copy of a letter from the tenant which states that they were alerted to an unauthorized person in their rental unit on their mobile device on October 22, 2018, which has caused them stress. The tenant states that the unauthorized person was an agent of the landlord and that they have not had any apology from the landlord regarding the incident. The tenant confirms that nothing was out of place or missing in her apartment and that the agent of the landlord called to apologize after being confronted by the tenant. The tenant then indicates that a yellow post-it note was found in the garbage, with the number of an adjacent unit to hers, where the agent intended to go but grabbed the wrong keys and entered the tenant's rental unit instead of the intended one;
- A picture of the post-it note with the adjacent unit's number on it indicating bath sink plug, a phone number and a time; and
- A copy of a letter dated November 15, 2018, from the occupant of the adjacent unit who confirms that the agent of the landlord attended their rental unit to attend to a plugged bathroom sink.

The landlord provided in evidence:

- A copy of a letter dated November 30, 2018, stating that the landlord does not agree to the tenant changing the locks due to the need for access if required for flood or fire; and
- A copy of an e-mail from the building manager to the landlord which states that the agent of the landlord was working on a handful of requests for maintenance around the building and mistakenly took the keys for the rental unit instead of the adjacent unit who had a blocked sink. The e-mail clarifies that the agent looked for the plugged sink, could find no issue and then exited the rental unit. Finally, the e-mail indicates that the landlord's agent is sorry and apologized to the tenant for the unauthorized access.

The tenant testified that an agent of the landlord entered her rental unit without giving any notice to do so. The tenant stated the agent wandered into the rental unit from 2:30 p.m. to 2:41 p.m. and that no items were moved or missing. The tenant submitted that she found a note with an adjacent unit's number on it in the garbage. The tenant stated that she called the police to file a report and that the policeman told her that an agent of the landlord had just grabbed the wrong keys but that the file would remain open.

The tenant confirmed that no agent of the landlord had ever previously entered into her rental unit since the beginning of the tenancy and that this was the only incident. The tenant did maintain that she felt the agent of the landlord entered her rental unit without notice intentionally and that she would like to have the locks changed to prevent this from happening again as the incident has caused her stress.

The landlord submitted that the agent entered the rental unit by accident and that even the police officer said that it was an honest mistake. The landlord stated that the agent of the landlord had a handful of work requests and grabbed the wrong keys. The landlord testified that they have never accessed a unit without proper notice in 20 years but that they have changed their process to make sure that it does not happen again to the tenant or any other occupants.

The landlord submitted that they need access to the unit due to the building being old and potential for plumbing or other emergencies that would necessitate immediate access to the rental unit.

The tenant confirmed that she has had to call the landlord a few times regarding leaks in the plumbing.

### Analysis

Section 70 of the Act establishes that an arbitrator may suspend or set conditions on a landlord's right to enter a rental unit under section 29, which restricts a landlord's right to enter the rental unit, if they are satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, which requires 24 hour written notice prior to entry.

Section 70 of the Act also allows an arbitrator to authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit if the arbitrator is satisfied that an order to suspend or set conditions is not sufficient to stop the landlord from entering the rental unit without giving proper notice.

Residential Tenancy Policy Guideline #7 states that; "Where a tenant can prove that the landlord has entered contrary to the Residential Tenancy Act, the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants."

The tenant bears the burden of demonstrating, on a balance of probabilities, that the landlord is likely to enter the rental unit again without giving proper notice in accordance with section 29 of the Act.

I have reviewed all documentary evidence and the affirmed testimony of the parties and I find that the tenant has not demonstrated that the landlord is likely to enter the rental unit again without giving notice in accordance with the Act.

I find that the tenant has confirmed in their evidence and testimony that the agent of the landlord intended on going into another rental unit when they accidentally entered the tenant's rental unit. I find that the post-it note with the adjacent unit's number on it is very similar to the rental unit's number, with the reason for entry on the post-it note being consistent with what the landlord has indicated and it is easy to see how the mistake was made. I find that the tenant confirmed that the agent of the landlord was only in the unit for a short period of time and that their belongings were not interfered with. I find that the police told the landlord and the tenant that they were satisfied that the landlord's agent entry into the rental unit was an honest mistake. I accept the landlord's testimony that the agent had multiple work requests and had just grabbed the wrong keys.

I accept the landlord's testimony that, due to this incident with the tenant, they have changed their procedures to now double check keys being taken for the purpose of entering units in the building. I find that the landlord is being proactive to make sure a similar incident of unauthorized access does not happen again in the future.

In addition to the above, I find that the tenant has confirmed that she has had to call the landlord for plumbing issues in the past and that, due to the age of the building, the restriction of the landlord's access to the rental unit could have the potential to result in damage to other occupants' units if the landlord is not able to access the rental unit in an emergency situation.

For the above reasons I dismiss the tenant's request to suspend or set conditions on the landlord's right to enter the rental unit and to change the locks, without leave to reapply.

If an agent of the landlord does access the rental unit again without authorization, the tenant will be a liberty to apply again to suspend or set conditions on the landlord's right to entry and to have the locks changed based on a new incident.

Section 62 (3) of the *Act* allows the director to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies. When a party makes a claim for the landlord to comply with the *Act*, the burden of proof lies with the applicant to establish the claim.

I find that the tenant has demonstrated that the landlord did not comply with the *Act* when entering the rental unit without providing written notice. For this reason, I Order the landlord to comply with the *Act* for any future entries into the tenant's rental unit.

As the tenant has been partially successful in their Application to have the landlord comply with the *Act*, I allow them to recover \$33.00 of their filing fee from the landlord.

### Conclusion

**I Order** the landlord to provide written notice in accordance with section 29 of the *Act* for all future entries into the tenant's rental unit.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$33.00, to recover part of the filing fee for this application.

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 19, 2018

---

Residential Tenancy Branch