



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FFT

Introduction

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

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. Tenant C.S. (the "tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord did not provide the tenant with his mailing address. The tenant entered into evidence a copy of the tenancy agreement in which the landlord's mailing address is absent. The tenant testified that the landlord regularly has mail delivered to the tenant's address and that it is the common practice of the parties for the tenant to notify the landlord via text message when he has mail to pick up. The tenant testified that she leaves the landlord's mail in the mailbox located on the outside of the subject rental property which is a house.

The tenant testified that she mailed the notice of dispute resolution package (the “package”) to her address, with the landlord’s name on it, on November 16, 2018 and that the package was delivered on November 20, 2018. A Canada Post receipt stating same was entered into evidence. The tenant testified that on November 20, 2018 she texted the landlord advising him that he had mail to pick up and that she would leave it in the mailbox outside the subject rental property, as per their usual practice. The tenant testified that the landlord attended at the subject rental property and collected his mail a couple of days later.

I find that the landlord was obligated to provide the tenant with his mailing address in writing, which he failed to do. I accept the tenant’s testimony that the regular practice established between the parties was for the tenant to leave the landlord’s mail in the mailbox and notify him of its arrival by text message. I accept the tenant’s testimony that the package was delivered to the subject rental property on November 20, 2018 and that the landlord picked it up a couple of days later. While the above method of service does not comply with the service requirements set out in section 89 of the *Act*, I find that the landlord was sufficiently served, for the purposes of the *Act*, with the package, pursuant to section 71 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to an Order that the landlord’s right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant’s claims and my findings are set out below.

The tenant provided undisputed testimony as to the following facts. This tenancy began on September 15, 2018 and is currently ongoing. Monthly rent in the amount of \$2,550.00 is payable on the first day of each month. A security deposit of \$1,275.00

was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified to the following facts. The landlord has requested access to the subject rental property and its yard with less than 24 hours' notice. On such instances the tenant has declined to allow the landlord access to the property. The landlord has not attended at the subject rental property when the tenant has declined his access request.

The tenant testified to the following facts. In November 2018, the landlord, on three occasions, provided 24-hour notice of inspection of the subject rental property, via text message and did not attend at the subject rental property on any of those occasions. The tenant testified that she made arrangements to be at home on all of the dates the landlord requested an inspection to be conducted and that his repeated no-shows have been a major inconvenience. The tenant entered into evidence a text message between the tenant and the landlord in which the tenant asks where the landlord is as she has been waiting for the inspection and the landlord responds that he will not attend at the property that day.

The tenant testified to the following facts. In November 2018 the landlord told her that she would have to find another place for December 1, 2018 because her November rent was one day late. The tenant entered into evidence the above described text message. The tenant is seeking an Order that the landlord only end the tenancy in accordance with the *Act*, and not via text messages.

Analysis

Section 29 of the *Act* states:

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.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that requesting access to the subject rental property with less than 24 hours' notice is not a breach of the *Act* as section 29(1)(a) allows the landlord to enter the subject rental property with less than 24 hour notice, if the tenant agrees at the time of entry. Since the landlord did not attend at the subject rental property after the tenant declined to give him permission to enter, I find that the landlord has not breached the *Act* in this instance.

I accept the tenant's testimony that the landlord has been providing 24-hour notice of inspection more than once per month via text message, and not attending at the allotted time. I find that the landlord has not provided written notice of the inspections in accordance with the *Act* as text messages do not meet the requirements under section 88 of the *Act*. I Order the landlord to provide the tenant with written notice of entry at least 24 hours and not more than 30 days before the entry in accordance with section 29 of the *Act*. I Order the landlord to serve any notice of entry on the tenant in accordance with section 88 of the *Act*.

Section 88 of the *Act* reads as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

- (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service prescribed in the regulations.

I find that providing the tenant with multiple dates for inspection of the subject rental property, and not attending on the dates provided, to be unreasonable. Pursuant to section 70 of the *Act*, I Order the landlord to provide the tenants with only one notice of entry for inspection of the subject rental property per month. If the landlord cannot attend on the date stated in the notice, the landlord is barred from issuing another notice of entry for inspection for one month.

I find that the text message from the landlord to the tenant informing the tenant that the tenancy will end at the end of November 2018 is not an eviction notice in compliance with the *Act* and has no impact on this tenancy. I caution the landlord against issuing further eviction notices that do not comply with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I Order the landlord to provide the tenant with written notice of entry at least 24 hours and not more than 30 days before the entry in accordance with section 29 of the *Act*.

I Order the landlord to serve any notice of entry on the tenant in accordance with section 88 of the *Act*.

Pursuant to section 70 of the *Act*, I Order the landlord to provide the tenants with only one notice of entry for inspection of the subject rental property per month. If the landlord cannot attend on the date stated in the notice, the landlord is barred from issuing another notice of entry for inspection for one month.

I caution the landlord against issuing further eviction notices that do not comply with the *Act*.

I issue a Monetary Order to the tenants in the amount of \$100.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 20, 2018

Residential Tenancy Branch