



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1077036 BC LTD known as SANDY CREEK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LA LRE OLC FF

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on November 22, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order authorizing the Tenant to change the locks to the rental unit;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit or site;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by L.A., an agent, who was accompanied by D.S., a witness who did not participate in the hearing. All in attendance provided a solemn affirmation.

The Tenant testified that Landlord was served with the Application package by registered mail. In addition, the Tenant testified a further documentary evidence package was served on the Landlord at the Landlord's office. On behalf of the Landlord, L.A. acknowledged receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The Landlord submitted documentary evidence in response to the Application. According to L.A, it was served on the Tenant by registered mail. Although the Tenant denied receipt, L.A. provided tracking information which confirmed the evidence was delivered on December 28, 2018. However, I find there is insufficient evidence in support of service in accordance with sections 88 and 90 of the Act. Further, the Tenant denied receipt. Therefore, I find I am not satisfied the Landlord's documentary evidence was served on and received by the Tenant in accordance with the Act. As a result, the documentary evidence has not been considered further in this Decision.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were asked specifically to refer me to any documentary or digital evidence upon which they intended to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order authorizing her to change the locks to the rental unit?
2. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit or site?
3. Is the Tenant entitled to an order that the Landlord comply with the Act?
4. Is the Tenant entitled to an order granting recovery of the filing fee.

Background and Evidence

The parties confirmed the tenancy began on or about September 23, 2012, although the Landlord took ownership of the rental property sometime after that date. The Tenant continues to occupy the rental unit. Rent in the amount of \$825.04 per month is due on the first day of each month. The Tenant paid a security deposit of 375.00, which the Landlord holds.

The Tenant testified there have been ongoing issues with respect to garbage at the rental property. However, the main issue is the Landlord's entry to the Tenant's rental unit. The Tenant described a single incident on November 19, 2018. She testified she was at work when her cellular phone notified her that someone had entered the rental unit. She was able to observe the individual on her cell phone. The Tenant immediately contacted the RCMP who advised her to remain at work while they attended the rental unit.

The Tenant testified she does not know who entered her rental unit but believes it to be D.S. The Tenant stated she was not given any notice of the Landlord's intention to enter. She suggested the Landlord's entry is an attempt to harass her and encourage her to move so the unit can be rented at increased rates.

In reply, L.A. acknowledged that D.S. entered the rental unit to inspect for bed bugs on November 19, 2018. L.A. stated that 10 units were being inspected and that written notice was given to each tenant on or about November 14, 2018.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 70(2) of the *Act* empowers me to order that a tenant is authorized to change the locks to a rental unit. However, I find there is insufficient evidence before me to conclude the Tenant is entitled to this order. The Tenant's request was based on one allegation of entry without adequate notice (which L.A. denied). This aspect of the Application is dismissed.

Section 29 of the *Act* sets out circumstance in which a landlord can enter a rental unit. For routine inspections, a landlord must give written notice at least 24 hours and not more than 30 days' before the entry. In this case, the Tenant testified notice was not provided. On the other hand, A.L. testified notice was given on or about November 14, 2018. As a result, I find there is insufficient evidence before me to grant the order sought. This aspect of the Application is dismissed.

Section 62 of the *Act* empowers the director to make any order necessary to give effect to the rights, obligations and prohibition under the *Act*, including an order that the landlord comply with the *Act*. In this case, I find it is more likely than not that the Tenant did not receive notice of the Landlord's entry. I am particularly persuaded by her decision to contact the RCMP, which action should not have been taken if notice was provided by the Landlord in accordance with the *Act*. I order the Landlord to comply with section 29 of the *Act*, which sets restrictions on a landlord's right to enter a rental unit.

As the tenant has been partially successful, I grant recovery of part of the filing fee paid to make the Application in the amount of \$50.00, which I order may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order the Landlord to comply with section 29 of the *Act*, which sets restrictions on a landlord's right to enter a rental unit.

I order that the Tenant is entitled to recover part of the filing fee paid to make the Application in the amount of \$50.00, which may be deducted from a future rent payment at the Tenant's discretion.

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: January 8, 2019

Residential Tenancy Branch