



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, LRE, LAT, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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.

Both parties 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.

The tenant testified that they provided the landlord with a complete copy of the their dispute resolution hearing package by hand and by registered mail on December 12, 2018. The landlord confirmed receipt of a part of this package, but gave sworn testimony that the package did not include the details for calling into this hearing, which the landlord said they had to obtain directly from the Residential Tenancy Branch (the RTB). Despite the landlord's claim that they did not receive the full hearing package, I am satisfied that this package was duly served to the landlord in accordance with section 89 of the *Act* in sufficient detail that the landlord knew the tenant's claim and was able to connect with this hearing, albeit only after contacting the RTB beforehand.

The tenant testified that they included written evidence to be considered at this hearing as part of a package and claim that the tenant had submitted as part of the tenant's application to the Supreme Court of British Columbia (the Supreme Court) for the issuance of a monetary award of \$75,000.00 against the landlord. The landlord was unclear as to which of these documents provided by the tenant were to be considered as part of the tenant's current application to the RTB. The landlord testified that they sent the tenant a copy of their written evidence by registered mail on December 31, 2018. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that they had been out of town for a week and had not received any notification from Canada Post that a registered mail package had been sent to the tenant. I accept that the landlord was served with the tenant's written evidence and that the tenant was deemed served with the landlord's written evidence on January 5, 2019, the fifth day after their mailing. These documents were served in accordance with sections 88 and 90 of the *Act*.

Preliminary Issue - Supreme Court Applications

As noted above, the parties agreed that the tenant initiated legal proceedings through the Supreme Court on December 12, 2018, the day after the tenant applied for dispute resolution, to obtain a monetary award far in excess of the \$35,000.00 limit for consideration by arbitrators appointed pursuant to the *Act*. The tenant testified that their Supreme Court action sought a monetary award of \$75,000.00 for defamation, slander, harassment by the landlord during the course of this tenancy and emotional damages caused by the landlord. The parties also agreed that the landlord submitted their own application to the Supreme Court for the recovery of lost wages of \$980.00 from the tenant, stemming from the tenant's actions.

Paragraph 58(2)(c) of the *Act* establishes that arbitrators must resolve disputes unless "the dispute is linked substantially to a matter that is before the Supreme Court." At the hearing, I advised the parties of my finding that the tenant's current application for a \$20,000.00 award cannot be separated from the tenant's ongoing application for the issuance of a \$75,000.00 that is currently before the Supreme Court. As such, I decline to consider the tenant's application for a monetary award of \$20,000.00 for stress.

Issues(s) to be Decided

Should an order be issued requiring the landlord to change the locks to this rental unit? Should an order be issued restricting the landlord's right to enter this rental unit? Is the tenant entitled to obtain a monetary award to recover their filing fee from the landlord?

Background and Evidence

The parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on March 7 and 8, 2018 for a tenancy that is to run from March 15, 2018 until March 31, 2019. Monthly rent is set at \$1,250.00, payable in advance on the first of each month.

There have been a number of disputes during the course of this tenancy, which have led to the issuance of a series of Notices to End Tenancy by the landlord to the tenant. These disputes have been considered by other arbitrators appointed pursuant to the *Act* in October 2018, as noted at the beginning of this decision. The landlord's previous attempts to end this tenancy, including an attempt to do so for an early end to tenancy that was dismissed by an arbitrator in October 2018, have proven unsuccessful. The landlord has applied again to end this tenancy early, and a hearing is set for January 24, 2019 at 9:30 a.m., to consider that application by the landlord.

As this tenancy is scheduled to end on March 31, 2019, and as the landlord has a hearing within the next ten days to obtain an earlier end to this tenancy, there appears little value in assessing those elements of the tenant's claim that relate to some of the problems identified in the tenant's application that would only be of relevance if this tenancy were to continue.

Although the landlord offered to change the locks on the rental unit to ensure that only the landlord and the tenant have keys to access the tenant's rental unit, the tenant rejected this offer. The tenant testified that their interest in seeking a change to the locks is to prevent the landlord from entering the rental unit.

Without admitting to any alleged contravention of the provisions of the *Act* regarding the landlord's unauthorized entry to the rental unit, the landlord did not dispute the tenant's request for an order to limit the landlord's right to enter the rental unit to those situations permitted under the *Act*.

Analysis

I am not satisfied that the tenant has demonstrated any entitlement to the issuance of an order pursuant to section 70(2) of the *Act* that would allow the tenant to change the locks to the rental unit without providing the landlord with a copy of keys to be used in emergency situations. I dismiss this element of the tenant's application without leave to reapply.

In accordance with section 70(1) of the *Act*, I issue an order restricting the landlord from entering the rental unit under circumstances that lie beyond those outlined in section 29 of the *Act*, or under circumstances that present as a true emergency requiring the landlord to enter the rental suite to preserve the landlord's property. As set out in section 29 of the *Act*, this would require the landlord to provide at least 24 hours written notice to the landlord of any non-emergency entries for the purposes of undertaking inspections of the premises or repairs as required.

As the primary focus of the tenant's application is beyond my jurisdiction to consider, I make no order requiring the landlord to reimburse the tenant for the tenant's filing fee.

Conclusion

I decline to consider the tenant's application for a monetary award as this matter is linked to a matter currently before the Supreme Court.

I order the landlord to refrain from entering the tenant's rental unit without first complying with the provisions of section 29 of the *Act*, with the sole exception of situations presenting as true emergencies requiring the landlord's attendance at the rental unit to preserve the landlord's property. The tenant's application to change the locks is dismissed without leave to reapply. The tenant's application to recover the filing fee is also dismissed 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(1) of the *Residential Tenancy Act*.

Dated: January 14, 2019

Residential Tenancy Branch