Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated January 2, 2019; authorization to change the locks to the rental unit; orders to suspend or set conditions on the landlord's restricted right to enter the rental unit; and, orders for the landlord to comply with the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

The tenants sent their original hearing package to the landlords via registered mail on January 10, 2019. No evidence or written submissions accompanied these documents other than that provided on the tenant's Application for Dispute Resolution and the other documents generated by the Residential Tenancy Branch. The landlords confirmed receipt of this package.

The tenants then submitted an Amendment and copious amounts of documentation and evidence and sent that package to the landlords via registered mail on January 29, 2019 and the landlords confirmed receipt of this package on February 4, 2019.

On February 5, 2019 the landlord sent a large package to the tenants in response to their claims and the tenants confirmed receipt of this package on February 6, 2019.

Pursuant to section 59 of the Act, an applicant is required to provide full particulars as to the nature of their claim when making the Application for Dispute Resolution and it is unreasonable to expect the respondent to have to wait until copious amounts of written submissions and evidence arrive only days before the hearing. Further, the tenants sought to add a monetary claim and a request for repair orders by way of the Amendment and the Amendment was received less than 14 clear days before the scheduled hearing. In order to meet the deadline for a February 14, 2019 hearing, the documents must be received by the respondent no later

than January 30, 2019. The date of receipt of documents and the date of the hearing are not included in calculating the deadline for serving an Amendment and evidence. It is important for parties to allow sufficient time for mailing and pursuant to section 90 of the Act, a person is deemed to be in receipt of mail five days after mailing. Accordingly, in proceeding to resolve this case, I only considered the issues sufficiently set out on the tenants' Application that was sent to the landlords on January 10, 2019 and I did not permit the Amendment.

The tenants brought to my attention that the 10 Day Notice was dealt with during a hearing that was held on January 15, 2019 (file number referred to on the cover page of this decision). As a result of that proceeding on January 15, 2019 the tenancy is continuing at this point in time. Since this hearing was scheduled on an urgent basis; the tenancy is continuing; and, the parties are essentially paralyzed by their conflict, I determined it appropriate to deal with the tenant's request for authorization to change the locks and set conditions on the landlord's right to enter the unit. I also addressed this issue of replacing the fridge as both parties raised this as an issue that needs to be addressed sooner than later. As the hearing was nearing an end, I was able to bring the parties together to find an agreeable method to deliver a replacement fridge to the tenants and selecting an agreeable way to serve notices of entry and selecting dates/time for entry. As I pointed out to the parties, they are capable to working together if they act reasonably and I encouraged them to try that approach in the future to avoid having to file Applications for multiple issues where possible. Nevertheless, any matters not address in this decision that cannot be resolved despite the parties best efforts are severed from this Application and dismissed with leave to reapply.

The tenants' evidence included a USB stick that contained videos. The landlords claimed they were unable to view the videos because their computer broke and the other computers they tried would not play the videos. The tenant pointed out that at the last hearing the landlord admitted that she was able to view at least one of the videos and that the tenants had submitted the same video with this evidence package. The landlord then acknowledged that she was able to view the video involving a key and that her husband was also videotaping an incident on January 4, 2019. I viewed and considered the January 4, 2019 video in making my decision.

Issue(s) to be Decided

1. Is it necessary and appropriate to authorize the tenants to change the locks to the rental unit without giving the landlords a key?
2. Is necessary and appropriate to suspend or set conditions on the landlord's restricted right to enter the rental unit?
3. How should a replacement fridge be provided to the tenants?
4. Where should the tenants serve documents to the landlords?

Background and Evidence

The tenancy started on October 1, 2012 and the tenants are currently required to pay rent of $1,455.00 on the first day of every month. The rental unit is a 3 bedroom upper unit of a house and the lower level is also tenanted.

Below, I have summarized the urgent issues for which the tenants' seek remedy and the landlords' responses:

Request to change locks

The tenants submit that they want to change the locks and not give the landlords a key for the new locks because the landlord had tried to enter the property without proper notice and under the guise there was an emergency when there was not.

The tenants described events whereby the landlord attended the property on several dates since November 19, 2018. The landlord was largely in agreement with the dates and purposes of the landlord's attendance described by the tenants.

Considering the tenants had requested the landlord make repairs and the landlord in turn requested the tenants make certain repairs at the property; and, the landlord served the tenants with multiple Notices to End Tenancy which the tenants disputed, there were several times the landlord attended the property to inspect the unit and serve documents to the tenants including notices of entry, Notices to End Tenancy, and evidence.

I noted that the service of documents and entry by the landlord in November 2018 and December 2018, as described by the tenants, were lawful and that the tenants really took issue with the landlord's actions in early January 2019. I also noted that in the tenants' Application they also pointed to the landlord attending the property three days in a row up to January 4, 2019. Therefore, I proceed to describe the events from January 2, 2019 onwards view a view to determining whether the landlord's actions with respect to entering or attempting to gain entry were unlawful.

It was undisputed by the parties that the landlord attended the property on January 2, 2019; January 3, 2019 and January 4, 2019.

On January 2, 2019 the tenant took issue that the landlord came up behind her in the driveway, in the dark, to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord acknowledged she did this, explaining she saw the tenant come home and she needed to serve the tenants with a 10 Day Notice but she denied having snuck up on the tenant. The landlord explained that she generally attends the property in the evening become she works during the day.

On January 3, 2019 the landlord came to the property again to deliver a letter to the tenants and she gave it to the male tenant in the driveway. The tenant described how the nature of the letter

was to put the tenants on notice that the landlord considered the failing/leaking fridge to be an emergency repair issue. The landlord acknowledged this to be accurate but added that a notice of entry was also given with the letter so that she could enter the unit on January 4, 2019 to inspect the fridge and any damage it may have caused.

On January 4, 2019 the landlords attended the property along with a locksmith and accompanied by two RCMP officers. The RCMP were called to stand by to keep the peace at the request of the landlords. The landlords brought the locksmith to change the locks to the rental unit and the tenants were given two keys for the new lock. The tenants were of the position the lock changing was not necessary because they had offered the landlord a replacement key for the locks they had installed on the house 2 years prior and they took a video of offering the key to the landlord. The landlord claims the tenant's video was edited and altered. I did not delve into the dispute whether the tenants had offered a key to the landlord since that was explored during the previous hearing. The tenants denied the landlords entry to the rental unit on January 4, 2019, stating they had not received notice of entry and the tenants did not consider the fridge issue to be an emergency. The female tenant took an RCMP office into the house to show there was no pooling water or emergency situation. The RCMP officer reported back to the landlords that the RCMP officer did not observe pooling or leaking water or an emergent situation. The landlord still wanted to enter the unit to take photographs but the tenants objected and the landlords did not enter. Both the male tenant and the male landlord were videotaping these events. The focus of the videotaping was the actions of the landlords and very little was shown of the locksmith changing the lock.

On January 6, 2019 the landlord attended the property again and delivered documents to the tenants. The tenant described the landlord as hiding on the property while another person was knocking on the door. The landlord denied hiding on the property and explained she was serving evidence for their January 15, 2019 hearing. The landlord stated the male tenant eventually came to the door and the landlord handed him the evidence. The landlord alleged the tenant and/or friend also threatened the landlord with physical harm. The tenant denied that to be accurate.

On January 9, 2019 the landlord emailed the tenant to inform the tenant she was coming to the property to give the tenant a notice of entry. The tenant told the landlord not to come as it was her birthday. The landlord emailed a photograph of the notice of entry to the tenant. The notice of entry was to be for entry on January 10, 2019 to deal with the faulty fridge. The landlord then cancelled that appointment. The landlord claims the handyman refused to come work on the fridge because the tenants want to videotape the events.

Then the landlord told the tenants she was coming to inspect the house on January 21, 2019. The tenants objected, stating they had not received a notice of entry. The landlord did not proceed to inspect the unit on January 21, 2019. The landlord explained to me that they had started doing monthly inspections and they were to take place on or about the 21st of every

month. I informed the landlord that she needs to give a notice of entry for each monthly inspection, separately, and she indicated she understood.

The landlord sent a notice of entry to inspect the house on February 4, 2019 and then the landlord cancelled that inspection. The landlord again pointed to the tenants wanting to videotape the repairmen and that the repairmen do not want to be videotaped. The landlord alleged that the tenant has contacted every handyman in the area with a view to interfering with the landlord's attempts to repair and maintain the property.

The tenants acknowledge that they want to videotape their interactions with the landlord as the landlord has acted fraudulently in the past. The landlord claims the tenants alter their video footage and repairmen do not want to be videotaped. The tenants stated they do not intend to videotape the repairmen; rather, it's the landlord that they want to capture on the videotape.

Suspend or set conditions upon the landlord's restricted right to enter

The tenants requested the landlord give notices of entry for every entry. The landlord was agreeable to doing so and stated she would mail notices of entry to the tenants so as to avoid coming to the property to deliver documents. The tenants appeared satisfied with this approach.

The tenants requested that the landlord's entries be scheduled for weekends or if done on a weekday that the inspections end no later than 7:00 p.m. to accommodate their children's bedtime routine. The landlord agreed that she will try to schedule attendance at the property for Sundays where possible. As far as weeknight attendances, the landlord stated that she works during the day and that it is usually 7:00 that the landlord can get to the property but that the inspections are typically done in ½ an hour. The tenants seemed agreeable to this approach as a compromise.

Replacement of fridge

Both parties want to replace the current fridge in the rental unit and the landlord states she has one already and that all she needs to do is deliver it to the tenants. I proceeded to explore a mutually agreeable solution with the parties to accomplish this. The parties agreed to the following:

1. The landlord shall arrange to transport the replacement fridge to the rental unit as soon as possible and will notify the tenants, via text message, of the date and approximate time this will occur as soon as she makes the arrangements. If the landlord's arrangements change due to circumstances beyond her control, the landlord shall notify the tenants of this as soon as possible and notify the tenants of the new date/time for delivery.

2. The tenants will ensure their vehicle is moved so that the new fridge can be brought up the driveway.
3. The landlord(s) and a helper of their choosing shall bring the replacement fridge up to the alcove on the exterior of the house that is located by the front door of the rental unit.
4. The tenant(s) and a helper of their choosing shall bring the replacement fridge up to the kitchen in the rental unit and bring the old fridge down to the alcove where the landlord placed the new fridge.
5. The landlord shall remove the old fridge from the property.

The above agreement is intended to facilitate the replacement of the fridge will little to no personal interaction between the parties.

Service address for landlords

The tenants requested clarification of the service address to use for mailing documents to the landlords. The two landlords reside at two different addresses and requested that the tenants mail a copy of their documents to each landlord at their respective addresses.

Analysis

Upon consideration of that before me, I provide the following findings, reasons and orders with respect to the three issues addressed by way of this proceeding:

Suspend or set conditions on the landlord's right to enter the rental unit

Every landlord is required to comply with section 29 of the Act in order to enter a rental unit. Below, I have reproduced section 29 for the parties' reference:

> **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.

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

[Reproduced as written with my emphasis underlined]

Section 70(1) of the Act permits the Director, as delegated to an Arbitrator, to set different conditions upon the landlord's right to enter that are provided under section 29 of the Act. Section 70(1) provides:

> (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]*.

In this case, the landlord has been serving notices of entry to the tenants, although there was a dispute concerning lack of notice for the attempted entries of January 4, 2019 and January 21, 2019.

The letter of January 3, 2019 appears to be an attempt by the landlords to give the tenants 24 hours' notice of their intention to inspect the fridge and any damage to the floor by the fridge; however, the document does not set a time for entry which is required under section 29(1)(b)(ii) of the Act.

The tenants stated they did not get a notice of entry for the attempted entry of January 21, 2019 and after hearing from the landlord it appears the landlord may have believed, wrongfully, that she could inspect the unit monthly without having to give notice for each monthly inspection. Section 29(2) permits the landlord to inspect the unit monthly but the requirement to obtain the tenant's consent to enter at the time of entry or give the tenant a proper notice of entry remains.

In light of the two circumstances surrounding the landlord's believe she had the right to enter on January 4, 2019 and January 21, 2019 I am of the view this kind of dispute may be avoided in the future by the landlord becoming more familiar with the requirements of section 29(1)(b) and act in accordance with those requirements.

The numerous notices issued by the landlord have caused the landlord to attend the property often and considering the palpable acrimony between the parties, I am of the view the landlord's suggestion that she will mail notices to the tenants in the future is a good solution in the circumstances. Therefore, **I order the landlord to send notices of entry to the tenants via mail**. **The notice of entry must contain the date and time for entry and the purpose of entry, which must be reasonable.**

In mailing documents, the landlord must allow five days for mailing, plus 24 hours of notice. Thus, a notice of entry must have an entry date that is six days after it is mailed. It will be upon the landlord to prove a notice of entry is mailed if it is called into question.

In keeping with the solution proposed during the hearing, **I further order the landlord try to schedule entry for Sundays, where possible. If a Sunday is not reasonable in the circumstance, the landlord may enter on a weeknight provided the entry commences no later than 7:00 p.m.**

Where the landlord gives the tenants proper notice of entry and in accordance with my orders, I order that the tenants must not interfere with the landlord's entry.

With respect to the landlords' concerns that the tenants videotape the landlord and/or repairmen, I find the tenants within their right to videotape the landlord while she is in their rental unit or otherwise engaging them on the common property. I accept the tenant's submission that they do not intend to videotape repairmen as that statement is consistent with the video of January 4, 2019 where the locksmith was captured on the video very minimally.

If the tenants have been contacting repair companies who have been engaged, or may be engaged to do work for the landlord, I order the tenants to cease such activity. Furthermore, if it arises as an issue, the landlord should make clear to repairmen that the tenants may be videotaping the landlord but that the repairmen are not the subject of the videotape.

As for a landlord's right to enter without notice in the case of an emergency, I find it appropriate to expand upon this since it was a primary issue under dispute on January 4, 2019. **In order for the landlord to enter the rental unit to deal with an emergency, I order that an emergency be limited to situations described under "emergency repair" provisions contained in section 33 of the Act.**

Section 33 of the Act defines an "emergency repair" as being:

> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) made for the purpose of repairing
>> (i) major leaks in pipes or the roof,
>> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
>> (iii) the primary heating system,
>> (iv) damaged or defective locks that give access to a rental unit,
>> (v) the electrical systems, or
>> (vi) in prescribed circumstances, a rental unit or residential property.

[Reproduced as written with my emphasis underlined}

Request to change locks

Section 31 provides prohibitions on changing locks to a rental unit. Subsection (3) provides:

> (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 70(2) of the Act provides the Director, as delegated to an Arbitrator, to authorize a tenant to change the locks in certain circumstances. Section 70(2) provides:

> (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.

The tenants seek authorization to change the locks and to prohibit the landlord from having a key to the new locks. In order to grant this request, I have to find it likely that the landlord is

likely to enter the rental unit contrary to the entry requirements of section 29 of the Act, or as ordered under section 70(1).

I have reproduced section 29 of the Act in the previous section in this analysis.

Upon hearing from both parties, I find the landlord has not entered the unit unlawfully. The entries made by the landlord in recent months have been accomplished after giving a notice of entry.

There have been instances whereby the landlord indicates an intention to enter the rental unit and a notice to enter had not been issued according to the tenants, such as the attempted entry on January 4, 2019 and January 21, 2019. However, the landlord did not enter given the tenant's objection.

In light of the above, I find I am satisfied that the landlord has not entered without a notice of entry or where the tenants had objected. I have also addressed the need to issue a notice of entry and to mail it to the tenants six days in advance for all future entries, except in situations involving an "emergency repair", as described in the previous section and I am reasonably satisfied the landlord will comply with these orders. Therefore, **I do not authorize the tenants to change the locks at this point in time.** Should the landlord enter or attempt to enter unlawfully in the future, the tenants may reapply to seek further remedy.

From what the tenant described, the landlord has come onto the driveway and exterior of the property unannounced or without prior notice; however, the landlord is not required to give notice before coming onto common property, which includes the driveway. Nevertheless, the landlord must not violate the tenant's right to quiet enjoyment which includes reasonable privacy, freedom from unreasonable disturbance or significant interference. The landlord has been ordered to serve documents by mail in the future and I find compliance with that order will greatly reduce circumstances where the landlord shall be approaching the tenants in person.

Replacement of fridge

I authorize and order the parties to fulfill the terms agreed upon during the hearing to facilitate the replacement of the fridge in a timely manner and with a view to accomplishing this in the least confrontational way.

Service address for landlords

During the hearing, the tenants enquired as to the service address to use for the landlords as there have been changes to the landlord(s) residence(s). The tenants have been provided a different address for each landlord. The landlords confirmed during the hearing that they may serve each of them at their respective addresses now.

Filing fee

My impression of the parties is that they have been both been conducting themselves in a manner that would create difficulty and animosity and I order the parties to share the cost of the filing fee paid for this application. Therefore, I order the landlords to compensate the tenants $50.00 of the $100.00 the tenants paid for this application.

The tenants are hereby authorized to deduct $50.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlords must consider the rent to be paid in full.

Conclusion

I have issued orders with respect to the landlord serving documents, in particular notices of entry, and limited the times the landlord may enter the rental unit.

I have denied the tenants' request to change the locks.

The parties reached an agreement with respect to replacement of the fridge and I have ordered the parties to comply with their agreement.

The landlords' service addresses have been clarified.

The tenants shall recover one-half of the filing fee paid for this application from the landlords by deducting $50.00 from a subsequent month's rent and in doing so the landlords must consider the rent to be paid in full.

Any other issues raised by the tenants but not addressed in this decision are severed and dismissed with 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: February 15, 2019

Residential Tenancy Branch