# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes LRE, RP, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. an order suspending or restricting the landlord's right to enter the rental unit, pursuant to section 70 of the Act;
2. an order for the landlord to provide services or facilities required by the tenancy agreement or the Act, pursuant to section 62 of the Act; and,
3. an order for compensation for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on March 21, 2019 and the landlord and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to an order suspending or restricting the landlord's right to enter the rental unit?
2. Is the tenant entitled to an order for the landlord to provide services or facilities required by the tenancy agreement or the Act?
3. Is the tenant entitled to an order for compensation for the filing fee?

Background and Evidence

The tenant testified that the tenancy began on November 29, 2018 and will end on March 31, 2019. Monthly rent is $2,500.00 and the tenant paid a security deposit in the amount of $2,500.00. A copy of the written tenancy agreement was submitted into evidence.

The rental unit is fully furnished and the rent incudes a dishwasher.

The tenant was having problems with the dishwasher and exchanged emails with the landlord throughout December 2018 trying to resolve the problem. The dishwasher was not cleaning properly and would not dry the dishes. He was told to use different cleaning pods. The tenant was also having problems with a fan and a light fixture.

On January 22, 2019 at 2:30 PM the landlord sent the tenant an email (a copy of which was submitted into evidence) notifying the tenant that he, the landlord, would be attending to the rental unit the next day. The email reads as follows (excerpted):

> Hi [tenant's first name],
>
> I'm going to be coming by tomorrow afternoon to check on the condo, the deficiency list and pick up the chairs.

The tenant testified that he "never agreed" to the visit and was not available, or, did not anticipate being available when the landlord wanted to come by. The tenant said that he felt the visit by the landlord was a "breach of [our] privacy and space." On January 28, the tenant responded to the landlord by email and wrote the following:

> Please make sure you provide me with an exact time of meeting next time.
> On January 24th at 4:00 PM, you entered with your own keys after knocking a couple of times. Ideally you should have pressed [the] buzzer, or given me a call to check if I am available or not.
>
> This **must not** happen again. Kindly acknowledge.
>
> Best,
> [tenant]

The landlord testified that he got his plumber—the plumber has 25 years' experience—to look at the dishwasher. The plumber inspected the dishwasher and reported that the dishwasher was not working properly because someone, presumably the tenant, had put dish soap into it instead of dishwasher detergent. The dishwasher was soapy and sudsy due to wrong pods or improper soap. The plumber ran the dishwasher through a few cycles and it appeared to mostly fix the problem.

Regarding the fan, the landlord testified that there is a "slight tinging sound" when the fan is turned on level 1, but at higher speeds the "tinging" sound goes away. Other issues involved trying to fix the fan in the den and a burned out light bulb, but the landlord was met with indifference from the tenant, who commented that the tenant was moving out soon in any event. The tenant commented during his final submission that fan in the den has yet to be returned.

As for the inspection, the landlord testified that he gave the tenant a 24-hour notice and understood that "afternoon" to him means between "2:30 and 6:00" in the afternoon. He knocked on the tenant's door and was "waiting . . . and waiting . . . and waiting" and he could hear noise from inside the rental unit.

The parties testified about other, unrelated matters, such as the carpets, the excess security deposit, whether the tenant attended and viewed the rental unit before he signed the agreement, and so forth. However, as these matters are not pertinent to the tenant's claim I shall not describe them further.

In his final submission, the tenant reiterated that the primary issue in his claim has to do with the landlord's entry into the rental unit, and that it is about his privacy and security.

In his final submission, the landlord explained that this is "the first time dealing with someone who's difficult or particular" and that the tenant's issues are "a little ridiculous."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

**Re order suspending or restricting landlord's right to enter rental unit**

Section 70(1) of the Act grants me authority to issue an order to "suspend or set conditions on a landlord's right to enter a rental unit under section 29." This type of order is only issued when I am satisfied, on a balance of probabilities, that the landlord has or is likely to enter a rental unit in contravention of section 29 of the Act.

Section 29 ("Landlord's right to enter rental unit restricted") 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:
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> > (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).

In this case, the landlord gave written notice, by way of e-mail, to the tenant that the landlord would be entering the following day in the afternoon, and that he would be entering the rental unit to "check on the condo, the deficiency list and pick up the chairs." I find that the landlord gave notice that complied with section 29(1)(b) of the Act.

While a tenant may prefer to be present when a landlord enters the rental unit, a landlord is not required to do so only when the tenant is present. A landlord who gives notice in compliance with the Act may enter the rental unit during the times stated, with or without the tenant being present. A landlord does not need to provide the exact time that they are entering the unit, a landlord is permitted to enter the rental unit with their own keys, and they are not required to call the tenant just before they attend to the rental unit.

There was, I find, no breach or infringement upon the tenant's privacy, space, or security because of the landlord's entry in the circumstances.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving why I should issue an order under section 70(1) of the Act.

**Order for services or facilities required by tenancy agreement or the Act**

Section 62(3) of the Act grants me authority tomake 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."

Section 27 of the Act states the following:

> 27 (1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

In this case, the tenant claims that the dishwasher is, or was, not working correctly, thus resulting in a restriction of the service included in the rent. The landlord's plumber provided information that the wrong type of soap was put into the dishwasher, and that a certain type of pod must be used. The tenant testified that the dishwasher was not drying properly. The landlord testified that as is the case with most dishwashers, not everything will dry, such as plastic.

The tenant did not provide any testimony as to whether the dishwasher is still not working properly and referred to correspondence from December 2018. One email from the tenant (dated December 13) notes that the dishwasher foaming, and drainage issues were resolved, but that the dishwasher "still has wet dishes." As I noted, however, there is no evidence that this is still the case.

The tenant did not rebut the landlord's testimony regarding the fan that makes a "tinging" sound. But, the tenant did mention that the fan in the den has yet to be replaced. I note, however, that there is no mention of a fan in the tenancy agreement, and I do not find that the existence of a fan to be "essential to the tenant's use of the rental unit as living accommodation," as required by section 27(1)(a) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I do not find on a balance of probabilities that the tenant has met the onus of proving a ground on which I should issue an order under section 62 of the Act.

As the tenant's application for these orders was unsuccessful I dismiss his claim for compensation for recovery of the filing fee.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: March 21, 2019

Residential Tenancy Branch