



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FFL

Introduction

On April 8, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an order of entry into the rental unit.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of entry into the rental unit?

Background and Evidence

The Landlord and Tenant both testified that the tenancy is a month to month tenancy that began on November 1, 2012. Rent is geared to income. Rent in the amount of \$368.00 is to be paid to the Landlord by the first day of each month.

The Landlord testified that the rental building is undergoing a full envelope remediation due to water ingress. The Landlord testified that exterior walls, windows and patio doors are being removed and replaced and items within the rental unit such as heater

and kitchen and bathroom fans are also being replaced. The Landlord submitted that the repairs are necessary to prevent further damage to the building and to ensure the building remains a clean and safe environment for its residents.

The Landlord testified that the exterior wall of the Tenant's unit needs to come down and be replaced.

The Landlord testified that on March 21, 2019, they served a notice for their intent to enter the Tenant's unit on March 29, 2019. The Landlord's notice of entry provides that for the purpose of entry was to install a new bathroom fan, light fixture, and living room wall heater. The notice explains that the Landlord needs to enter the unit for five work days in order to perform the work which requires drywall sanding and painting of the bathroom and Livingroom. The Notice requests that the Tenant move his personal belongings away from the work areas and explains that the contractor can assist with moving heavy furniture.

The Landlord testified that on March 29, 2019, when they attended the Tenant's unit to enter there was a note left on the door that said "no entry". The Landlord testified that the Tenant did not contact them with any concerns prior to finding the note on the door. The Landlord testified that they issued the Tenant a letter dated April 2, 2019, informing the Tenant that his refusal to allow entry is a material breach of the tenancy agreement. The letter asks the Tenant to contact the Landlord to negotiate a time of entry for the renovations prior to April 5, 2019, or else the Landlord will apply for dispute resolution for an order of entry. The Landlord testified that the Tenant refused to talk to them.

The Landlord testified that on March 29, 2019, they noticed that the Tenant had changed the door lock on the rental unit without authorization. On April 5, 2019, the Landlord sent the Tenant an email explaining that changing the locks on the rental unit is a material breach of the tenancy agreement which states that the Tenant must not change locks or other means of access unless the Landlord agrees in writing.

The Landlord testified that on April 8, 2019, they posted notices of entry to the Tenant's unit for April 24 and May 3 for multiple days. The Landlord's notice of entry provides that the purpose of entry was for the removal of the existing exterior wall and reconstruction of exterior wall and installation of a new temporary window. The notice provides that on May 3, 2019 the Landlord will be installing a permanent window; installation of new trim and installation of heaters. The Notice requests that the Tenant move his personal belongings away from the work areas and explains that the contractor can assist with moving heavy furniture.

The Landlord testified that the Tenant again left a note on his unit door saying "no entry". The Landlord testified that they did not enter due to a previous incident where the Tenant became upset.

The Landlord testified that the Tenant's actions of denying entry into the unit have affected the Landlord's and contractors ability to get the work done. The Landlord testified that they had to send sub-contractors away. The Landlord testified that they will suffer extra costs to get the work done.

In reply, the Tenant testified that he is a person with a disability. He testified that the Landlord's notice of entry was for between the hours of 8:00 am to 5:00 pm for quite a few days. The Tenant testified that the Landlord is asking him to move his furniture which amounts to a considerable disruption for him.

The Tenant submitted that the work the Landlord wants to perform amounts to him having to move his possessions for 42 days. The Tenant submitted that he feels the work can be completed in three to four days. The Tenant testified that the windows for his unit are not even on site.

The Tenant testified that he has the right to quiet enjoyment and he wants the work done in a timely manner.

The Tenant provided testimony confirming that he did not contact the Landlord regarding his concern for moving his possessions or to ask for help to move his possessions.

The Tenant testified that on March 29, 2019, he changed the lock on his unit door. He testified that he changed the locks back to the original lock on April 4, 2019.

In reply, the Landlord testified that the windows for the Tenants unit are on site and were available to be installed in the Tenants unit in accordance with the April notice of entry.

The Landlord testified that they have assisted other residents who have needed help preparing their unit or needed help moving furniture.

Analysis

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

Residential Tenancy Branch Policy Guideline # 6, Entitlement to Quiet Enjoyment provides that it is necessary to balance the Tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 29 (1) of the Act provides that 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).*

Section 31(3) of the Act provides that 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that on March 29, 2019, the Tenant changed the lock to the rental unit without authorization from the Landlord. I find that the Tenant breached section 31(3) of the Act.

I find that the notices of entry issued by the Landlord were issued in compliance with section 29(1) of the Act. I find that the notices of entry are very detailed and the purpose for entry is reasonable.

The Landlord has an obligation to maintain the rental property to make it suitable for occupation and it is reasonable that the Tenant will experience a temporary disruption to his quiet enjoyment of the tenancy while the repairs are being made.

I find that the Tenant did not contact the Landlord for assistance with preparing the unit or moving furniture. Since the Tenant did not even attempt to get help, I find that the Tenant's submission on this issue is not a reasonable excuse to deny the Landlord entry into the unit.

In addition, I find that the Landlord's notices of entry are very detailed and provide an explanation of the specific work that needs to be completed. I find that it is unreasonable to expect that this work can be completed within three to four days.

I find that the Tenant breached section 29(1) of the Act by denying the Landlord entry after receiving notices of entry issued in accordance with the requirements of the Act.

Based on my findings above, I order the Tenant to comply with any notices of entry issued by the Landlord for the purpose of making repairs in the rental unit and remediation of the rental building. The Landlord must provide written notice and entry must be between 8 a.m. and 9 p.m.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I grant the Landlord a monetary order in the amount of \$100.00.

Conclusion

The Tenant breached section 31(3) of the Act by changing the locks without authorization. I also find that the Tenant breached the Act by refusing entry to the

Landlord after receiving notices of entry that met the requirements of section 29(1) of the Act.

I order the Tenant to comply with any notices of entry issued by the Landlord for the purpose of making repairs in the rental unit and remediation of the rental building.

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: May 15, 2019

Residential Tenancy Branch