



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT MNDCT OLC

Introduction

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

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

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

Background and Evidence

The tenant has lived in this building since 2003, although the tenant moved into the current rental unit sometime in 2007 and 2008. The market rent for the tenant's rental unit is set at \$1,246.00, \$246.00 which is paid for by the tenant.

The tenant, in this application, is applying for a monetary order in the amount of \$1,872.50. The tenant clarified the details of her monetary application, which is indicated as \$2,000.00 on application. The tenant confirmed that she is seeking the following compensation, plus an order to change the locks to the rental unit, and for the landlord to comply with the *Act*.

Item	Amount
Monetary Compensation for Landlord's Failure to Comply with s.29 of the <i>Act</i> (5 hours x \$13.50x 27)	\$1,822.50
Recovery of lost cash	50.00
Total Monetary Order	\$1,872.50

The tenant testified that on at least 3 occasions the landlord had failed to give proper notice to enter her rental unit. As a result of landlord's repeated failure to comply with the *Act*, the tenant has had to take time off of work to ensure that she was present when the landlord required access to her rental unit. The tenant's monetary application is for the 27 occasions when she had to take time off work in order to allow the landlord to enter her rental unit as requested. The tenant included the notices for entry that were given to her.

The tenant testified that often the landlord's notices were taped to her door, and she would not have adequate time to make arrangements. Sometimes the notices were for the same day, and sometimes for multiple entries on multiple days, or for the entire day. The tenant listed 3 occasions when the landlord failed to give proper notice including, July 27, 2017 when the landlord did not give any notice, and the landlord's contractors entered her rental unit while her children were asleep, July 9, 2018 when the landlord's contractor had removed a window while her son was home and undressed, and another incident on February 20, 2019, which the landlord admits to. The landlord testified that she was away, and the contractor had entered the rental without notice thinking it was considered an emergency situation as the tenant had a dryer fire that needed to be taken care of. The tenant found this incident especially disturbing as her son discovered

that he was missing \$50.00 he had left on his dresser. The tenant did not have proof of who had taken the money, but stated that it was “quite possible they could have taken it” since they could not see who anybody else could have taken it. The landlord testified that this missing money was never reported to them.

The tenant also testified that it was expressed to her that the landlord and their contractors preferred them to not be there, which the landlord disputes was the case. The tenant included in her evidence letters she had sent the landlord as well as videos to document the illegal entries.

The landlord testified that they did their best and due diligence to ensure that proper notice was given. The landlord testified that all the windows and doors were replaced for this 40 unit building, and a lot coordination was involved.

The landlord testified that the locks were recently changed on March 7, 2019, and the landlords and 2 board members hold a master key in addition to the tenant’s copy.

Analysis

While I have turned my mind to the testimony of the tenant and her witnesses, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused her the losses claimed.

Section 29 of the *Act* prohibits the landlord’s right to enter the rental suite except with proper notice or the tenant’s permission. The landlord’s right to enter a rental unit is restricted, and the landlords must not enter unless:

- (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.

I find that the tenant had provided undisputed testimony that the landlord had failed to comply with the *Act* on at least one occasion. The tenant provided detailed evidence to support that the landlord had ignored her multiple requests to give proper notice as required by the *Act*. Accordingly I find that the tenant is entitled to monetary compensation for the landlord's failure to comply with the *Act* on at least 3 occasions. The tenant requested compensation for the 27 days of lost work which she took time off for. Although I find that the tenant is entitled to some compensation, the tenant did not provide sufficient justification for why she should be compensated for all 27 occasions. I am satisfied that the tenant did establish that the landlord had entered her rental unit on at least three occasions, and I find that the tenant is entitled to some compensation for these three occasions. Accordingly the tenant will be compensated \$202.50 for the landlord's breaches, which constitutes 3 days of lost wages using the calculations the tenant provided (5 x \$13.50 x 3 days).

I order that the landlord must comply with section 29 of the *Act* for all future occasions. I am satisfied that the landlord had changed the locks recently. As the landlord requires access to the rental unit in the case of an emergency, I am not allowing the tenant's application for an order to change the locks.

Although the tenant made a monetary claim for the \$50.00 that was missing, I find that the tenant had failed to provide sufficient evidence to demonstrate that this money had gone missing due to the landlord's actions. Accordingly, this portion of the tenant's monetary claim is dismissed without leave to reapply.

Conclusion

I allow the tenant's application for monetary compensation for the landlord's breach of section 29 of the *Act* in the amount of \$202.50.

I allow the tenant to implement a monetary award of \$202.50 by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$202.50 and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that the landlord comply with section 29 of the *Act*, and give proper notice before entering the rental unit on all future occasions.

The remainder of the tenant's application is 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: May 10, 2019

Residential Tenancy Branch