



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, OLC, OT

Introduction

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

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order restricting the landlord's right, under section 29 of the *Act*, to conduct monthly suite inspections.

The tenant and a representative of the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution was confirmed.

Issues to be Decided

1. Is the tenant entitled to an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
2. Is the tenant entitled to change the locks, pursuant to section 70 of the *Act*?
3. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
4. Is the tenant entitled to an Order restricting the landlord's right, under section 29 of the *Act*, to conduct monthly suite inspections of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,1950.00 is payable on the first day of each month. A security deposit of \$597.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that the resident manager of the subject rental property routinely enters her apartment without consent or notice and rearranges her furniture. No evidence, other than the tenant's testimony, was entered into evidence to support the tenant's claim, with the exception of one occasion discussed below. The landlord's representative denied the above testimony. The landlord entered into evidence a signed statement from the resident manager which states that she only entered the subject rental property when proper notice of at least 24 hours was provided to the tenant.

The tenant testified that on August 15, 2018 the landlord entered the subject rental property without notice or consent and left her a note. The note was entered into evidence. The resident manager's signed statement states that the tenant was provided with proper notice of entry. The landlord's representative testified that the resident manager posted notices of entry in the main lobby and laundry room listing all units that would be entered to fix the intercom system on August 25, 2019. The tenant testified that she did not receive the above notice.

The tenant testified that on October 25, 2019 the resident manager entered the subject rental property for a fire alarm inspection, ignoring a note provided to the resident manager asking her to knock first. The tenant confirmed receipt of proper notice of entry for the fire alarm inspection.

The landlord's representative testified that the notice of entry for October 25, 2019 was posted in the lobby and laundry room of the subject rental building. The tenant did not dispute the above testimony.

Analysis

Section 88 of the *Act* states that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find that posting a notice of entry in the lobby and laundry room does not constitute proper service under section 88 of the *Act* as the "address at which a person resides" under section 88(g) of the *Act* includes the unit number. If the landlord serves the tenant via posting, the notice should have been posted to the tenant's door. I accept the tenant's evidence that she did not receive notice of entry for the August 15, 2018 entry. I Order the landlord, pursuant to section 62 of the *Act* to comply with the service requirements stated in section 88 of the *Act*. Section 29(1) and (2) of the *Act* states 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).

I find that, pursuant to section 71 of the *Act*, the tenant was sufficiently served, for the purposes of this *Act*, with the Notice of Entry effective October 25, 2019 as she confirmed receipt of same. I find that pursuant to section 29 of the *Act*, the landlord (or the landlord's representative) was entitled to enter the subject rental property on October 25, 2019 to complete a fire alarm inspection. I find that in entering the subject rental property without knocking, the resident manager did not breach the *Act* as she was entitled to enter, pursuant to section 29 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenant has not proved, on a balance of probabilities, that the resident manager entered the subject rental property on dates other than August 15, 2018 and October 25, 2019.

Section 70 of the *Act* states:

- (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*].
- (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.

I find that the improper service of the August 2018 Notice of Entry and subsequent entry does not prove or indicate that the landlord or a representative of the landlord, is likely to enter the subject rental property, other than as authorized under section 29 of the *Act*. I find that my Order for the landlord to serve the tenant future Notices of Entry pursuant to section 88 is sufficient to protect the tenant's rights. I therefore dismiss the following of the tenant's applications:

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31; and
- an Order restricting the landlord's right, under section 29 of the *Act*, to conduct monthly suite inspections.

Conclusion

I Order the landlord to serve the tenant with all Notices of Entry, pursuant to section 88 of the *Act*.

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: October 28, 2019

Residential Tenancy Branch