



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code LRE FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 7, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order suspending or setting conditions on the Landlord's right to enter the rental unit or site; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenants testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on February 10, 2020. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the package is deemed to have been received by the Landlord on February 15, 2020.

The Tenants also testified that a further documentary evidence package was served on the Landlord by registered mail on February 24, 2020, the day it was uploaded to the online Dispute Management System. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the documentary evidence package is deemed to have been received by the Landlord on January 29, 2020.

The Landlord did not submit documentary evidence in response to the Application.

The Tenants were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit or site?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on December 1, 2018. Rent is due in the amount of \$1,050.00 per month. The Tenants confirmed they did not pay a security deposit or a pet damage deposit.

The original tenancy agreement was revised by an addendum dated February 3, 2020. The addendum added A.L. as a tenant and increased rent. Copies of the original tenancy agreement and the addendum were submitted into evidence. These documents confirm the existence of a tenancy between N.B. as landlord and the Tenants.

The Tenants also submitted a signed letter from N.B. dated February 18, 2020. In it, N.B. confirms she is a joint owner of the rental property with W.M., who is not named on the tenancy agreement or in this proceeding. The letter from N.B. also confirms that D.M. is committee of the estate of W.M. As committee of the estate of W.M., and in accordance with the definition of landlord found in section 1 of the *Act*, I find that D.M. is a landlord for the purposes of the *Act*.

The Tenants seek an order an order suspending or setting conditions on the Landlord's right to enter the rental unit. Specifically, the Tenants testified that they have had very little contact with D.M. until recently. The Tenants describe several incidents of concern, as follows:

On or about June 25, 2019, D.M. cut the lock off the laundry room door that had been placed there by N.B.

On or about September 14, 2019, D.M. parked his truck at the end of the driveway preventing C.D. from leaving. D.M. did move his truck but C.D. did not feel comfortable leaving with D.M. at the rental property. He pulled his truck alongside C.D.'s car which she found to be unnerving.

On or about December 19, 2019, D.M. was observed to be staring into the rental unit through a window. C.D. called the police as a result of this incident.

The Tenants also testified that D.M. routinely attends the rental property on Thursdays. It appears he spends five to ten minutes in the yard or the shed then leaves.

Finally, the Tenants relied on a hand-written notice from D.M. advising of his intention to inspect the rental unit on February 27, 2020 between 11:00 a.m. and 1:00 p.m. A copy of the notice was submitted into evidence. The Tenants also submitted a copy of their type-written response to the Landlord dated February 23, 2020. In it, C.D. writes: "In the past year you have yelled at me, spied at me through the window and used your motor vehicle to entrap me."

The Landlord did not attend the hearing to dispute the Tenants' evidence.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 29 of the *Act* confirms a landlord is permitted to access a rental unit by giving a tenant sufficient written notice of an intention to do so. However, section 70 of the *Act* empowers the director to suspend or set conditions on a landlord's right to enter a rental unit. It 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.*

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the Tenants are entitled to the relief sought. While I accept that D.M. has attended the rental property as described by the Tenants, I find there is insufficient evidence before me to conclude that he provided the Tenants with any written notice of his intention to enter the rental unit until he issued the hand-written notice referred to above.

However, I accept the evidence of the Tenants who, relying on the letter from N.B. dated February 18, 2020, testified that D.M. is committee of the estate of W.M. Accordingly, I find that D.M. has authority to attend the rental property and enter the rental unit for legitimate purposes specified under the *Act*. However, it is recommended that N.B., W.M., and D.M. determine a coordinated process for entering the rental unit that complies with the *Act* and ensures the Tenants' right to quiet enjoyment of the rental unit is preserved.

The Tenants' Application is dismissed.

Conclusion

The Tenants' Application is dismissed.

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: March 11, 2020

Residential Tenancy Branch