



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, LRE

Introduction

This hearing dealt with the Tenant's application filed under the Residential Tenancy Act, (the "Act"), requesting an Order for the Landlord to comply with the Act, to request an order for regular repairs to the rental unit, and an Order to suspend or set conditions on the Landlord right to enter the rental unit. The matter was set for a conference call.

Both the Landlord, the Landlord's wife (the "Landlord"), the Tenant and the Tenant's Advocate (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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

- Should the Landlord be ordered to comply with the Act?
- Should the Landlord be ordered to repair the rental unit?
- Is the Tenant entitled to an Order to suspend or set conditions on the Landlord right to enter the rental unit?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on January 1, 2016, on a month-to-month basis. The tenant lives in the basement of a two-level house and pays \$404.00 a month in rent for the exclusive use of his bedroom and shared use of the kitchen and bathroom. The landlord does not live on the premises; however, there are six bedrooms on the rental property and the Landlord rents out each one under separate tenancy agreements.

The Tenant testified that the fridge, located in the basement of the rental property, is leaking water on the floor and that he has asked the Landlord to repair the fridge but that the Landlord has not, and the fridge continues to leak.

The Landlord testified that the fridge is leaking but that it is due to the Tenant and the one other renter living in the basement of the rental property, putting too much food in the fridge and not cleaning it properly.

During the hearing, both parties agreed that the Landlord would have the fridge inspected by a professional to determine if the fridge was malfunctioning or if it was being used improperly. The Landlord agreed to have the fridge repaired if the inspection finds that repairs are needed.

The Tenant testified that his room in the basement of the rental property is always cold, and he is not able to turn the heat up as the Landlord has the heat controls for the rental property locked under a plex glass case, to which the Landlord holds the only key. The Tenant requested a key to the heat controls for the rental property, so he could turn the heat up when he is cold.

The Landlord testified that the heat for the rental property is set at 22 degrees, and the rest of the renter living at the rental property are happy with the heat that is being provided. The Landlord testified that if the Tenant were to turn the heat up, the other renter would be too hot.

During the hearing, both parties agreed that the Landlord would provide the Tenant with a portable electric heater for his personal use.

The Tenant testified that the Landlord holds the only key for the mailbox for the rental property and that the Landlord attends the rental property every other day or so to open the mailbox and give the Tenant and the other renters their mail. The Tenant testified

that he believes that he should not have to wait a day or two to receive his mail, once Canada Post has delivered it to the mailbox and that he should be able to collect his mail. The Tenant requested a key to the mailbox the rental property so that he may collect his mail.

The Landlord testified that they do hold the only key to the mailbox for the rental property and that they attend the rental unit every other day to give reach renter and the Tenant their mail. The Landlord testified that the Tenant does not get much mail and should not need his own key.

The Tenant testified that the Landlord attends the property without providing proper written notice and that the Landlord excessively attends the rental property, which the Tenant finds disruptive. The Tenant testified that on one occasion, the Landlord email the Tenant that they would be coming by and that they showed up eleven hours later and just walked into the Tenant's room without knocking. The Tenant is requesting that the Landlord provide proper written notice for all entry on to the rental property, that the Landlord states in the notice why they are attending the property, when and how long they will be accessing the property and that the Landlord not use email as a means of service of the notice to enter the rental property.

The Landlord testified that they do attend the rental property regularly, but that they always get the verbal approval to enter the property from one of the renters. The Landlord testified that they attend the rental property regularly to deliver mail, collect garbage and conduct inspections on the common area the renters share in the rental property. The Landlord testified that they do not go into the Tenant's room without proper notice to that Tenant and that they have never entered the Tenant's room without knocking.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the undisputed testimony of the Tenant that the fridge in the rental unit leaks. Section 32 of the Act, states the following:

Landlord and tenant obligations to repair and maintain

- 32** (1) 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 a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

During the hearing, the Landlord agreed to have the fridge inspected by a professional fridge repair technician. Accordingly, I order the Landlord to obtain a certified technician to inspect the fridge no later than April 6, 2020. If the inspection reveals, repairs are required, the repairs must be completed no later than April 24, 2020. The landlord must use a certified technician to conduct the inspection and any necessary repairs to the fridge.

I accept the Tenant's testimony that there is insufficient heat in the Tenant's room, in the basement of the rental property. During the hearing, the Landlord agreed to provide the Tenant with a portable electric heater for the Tenant's personal use. Accordingly, I order the Landlord to provide the Tenant with a portable electric heater no later than March 27, 2020.

Regarding the Tenant's request for the Landlord to provide the Tenant with a key to the mailbox for the rental property. I accept the testimony of both parties that the Landlord holds the only mailbox key for this rental property and that the Landlord attends the rental property every other day to open the mailbox and give any mail that has come into the Tenant and the other 5 renters, living on the rental property. Section 28 of the Act states the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.**

I find the act of the Landlord holding sole possession of the only key for the common mailbox for this rental property to be a significant interference with the Tenant's reasonable use of the common mailbox. I find that the Landlord has breached of section 28(d) of the Act, by significantly interfering with the Tenant's right to the use of common mailbox for its reasonable and lawful purposes. Accordingly, I order the Landlord to provide the Tenant with a key to the mailbox for the rental property no later than March 27, 2020.

Regarding the Tenant's request for an order, restricting the access of the Landlord to the rental unit. I accept the testimony of both parties that the Landlord has repeatedly accessed the rental unit without providing the required notice to the Tenant. Section 29 of the Act states the following:

Landlord's right to enter rental unit restricted

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:

- (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 the Landlord has breached section 29 of the *Act* by not providing proper written notice to the Tenant before accessing the rental property.

I also accept the testimony of the Landlord and the Tenant that Landlord has been attending the rental unit every other day, approximately 15 times a month, to deliver mail, and conduct inspections. Additionally, I accept the testimony of the Tenant that this repeated and frequent access has been disturbing to the Tenant. Section 28 of the *Act* states the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;**
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord's action of access the rental property every other day to be excessive and a breached of section 28(a) of the *Act*, a tenant's right to reasonable privacy.

In order to protect the Tenants' right to privacy as set out in section 28 of the *Act*, I order the Landlord to comply with of the *Act*, and only access the rental property once a month as permitted under section 29(2) of the *Act*.

Although, to provided clarity, the Landlord retains the right to access the rental property to maintain the property and their tenancies as provided for under the *Act*. However, the right to access to maintain the property and tenancies does no change the requirement

of a Landlord to provide proper written notice of entry for each access as required by the *Act*.

Accordingly, I also order the Landlord to comply with sections 29 and 88 of the *Act*, regarding issuing the required written notice to the Tenant for all entry to the rental unit. The Landlord is to provide notice that includes; the reason for entry, the date of entry, and the duration of access, while utilizing the approved service provisions. Specifically, I order the Landlord to stop using email as a method of serving notice, until such a time that that method of service is recognized by the *Act*.

I acknowledge the Landlord's testimony, that they get verbal permission from at least one of the renters living at the rental property before each access. However, I cautioned the Landlord against relying on verbal approval of one renter, to access common areas in a rental property that houses 6 separate tenancy. The Landlord is advised that the requirements regarding written notice are not just there to protect a tenant's right to privacy, the requirement also protect a landlord. As the written notice, acts as documentation, that a landlord may use as potential evidence, if needed, to protect themselves against claims of unjust access.

Conclusion

I order the landlord to have a certified technician inspect the Tenant's fridge in the rental unit no later than April 6, 2020. If the inspection reveals, repairs are required, the Landlord will have a certified technician make the necessary repairs no later than April 24, 2020. The landlord must use a certified technician to conduct the inspection and any necessary repairs to the fridge.

I order the Landlord to provide the Tenant with an alternate heating source for his room no later than March 27, 2020.

I order the Landlord to provide the Tenant with a key to the mailbox for the rental property no later than March 27, 2020.

I order the Landlord to comply with Section 29 of the Act and only access the rental property once a month as permitted under section 29(2) for inspections. The Landlord retains the right to access the rental property to maintain the property and their tenancies, with proper notice.

I order the Landlord comply with section 29 of the Act and properly provide written notice for all access to the rental property.

I order the Landlord to comply with the service provisions set out in section 88 of the Act. Specifically, I order the Landlord to stop using email as his method of serve for notice of entry for this tenancy.

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 20, 2020

Residential Tenancy Branch