



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oakwyn Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on April 28, 2020 (the "Application"). The Tenants applied for an order to restrict or suspend the Landlord's right to enter the rental unit, as well as for the return of the filing fee, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants and the Landlord's Agent A.C. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of the respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order restricting or suspending the Landlord's right to enter, pursuant to Section 70 of the *Act*?
2. Are the Tenants entitled to an order granting the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Tenants stated that their tenancy began on February 15, 2016. The Landlord's Agent stated that the tenancy did not commence until March 15, 2016. Regardless, the parties agreed that currently, the Tenants are required to pay rent in the amount of \$2,025.00 to the Landlord on the first day of each month. The parties agreed that the Tenants paid a security deposit in the amount of \$975.00.

The parties testified and agreed that a flood occurred in the rental unit from the dishwasher on or around April 8, 2020. The parties agreed that there was significant damage caused to the rental unit as a result. The Tenants stated that they submitted their Application to restrict the Landlord's right to enter as the Landlord had sent several trades persons to the rental unit after the flood to mitigate the damage caused by the flood. The Tenants stated that at the time, the Landlord was not clear with the plan moving forward and that given the current state of emergency, they were concerned with the amount of trades people coming and going from the rental unit each day.

The Landlord's Agent responded by stating that at the time, the flood had caused a potential threat to the health and safety of the Tenants. As such, the Landlord felt it was necessary to attend the rental unit to mitigate the damage. During the hearing the Landlord's Agent stated that the next steps involve remediation of the rental unit and that the Landlord is willing to respect the Tenant's wishes to refrain from entering the rental unit during the state of emergency.

Analysis

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

Section 29 of the Act which states;

- (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;

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic

Landlord's right to enter rental unit – *Residential Tenancy Act* 8 (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.

(2) If a landlord gave written notice under section 29 (1) (b) of the *Residential Tenancy Act* before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.

(3) Despite any section of the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies:

- (a) an emergency in relation to the COVID-19 pandemic exists, and
- (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

I accept that during the hearing the Landlord's Agent stated that they were willing to respect the Tenants' concerns regarding trades people entering the rental unit during the current state of emergency due to COVID-19. I order that the Landlord continue to refrain from entering the Tenant's rental unit unless in accordance with Section 8 of the Order of the Minister of Public Safety and Solicitor General, Emergency Programs Act during the current state of emergency.

Following the state of emergency, the Landlord must ensure that the proper written notice is provided to the Tenants in accordance with Section 29 of the Act. Should the Landlord fail to provide the Tenant with written notice prior to entering the rental unit, the Tenants are at liberty to make an Application for monetary compensation under the Act.

During the hearing both parties requested guidance on how to proceed in regards to the remediation of the rental unit in relation to who's responsibility it would be to bear the costs. I find that this matter is not before me in the Tenants' Application. As such, I am not at liberty to make a finding in relation to this request. Should the parties have any

questions relating to the tenancy, they should consult an Information Officer at the Residential Tenancy Branch and/or consult the resources found at the Residential Tenancy Branch website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

In relation to the Tenant's claim for the return of the filing fee, I find that the Tenants provided insufficient evidence to demonstrate the Landlords entry into the rental unit was not necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public. As such, I decline to award the return of the filing fee paid to make the Application.

Conclusion

The parties agreed that the Landlord will not enter the rental unit unless in accordance with the Act and Section 8 of the Order of the Minister of Public Safety and Solicitor General, Emergency Programs Act during the current state of emergency.

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: June 09, 2020

Residential Tenancy Branch