



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, PSF, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord provide services or facilities required by the tenancy agreement or the law; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by his spouse who identified herself as one of the landlords and agent of the named landlord (hereafter referred to as the landlord's agent), and applied to adjourn the hearing. The landlords have applied for an Order of Possession and a monetary order for unpaid rent by way of the Direct Request process and are awaiting a Decision. The tenant responded that he has also filed another application disputing the notice to end the tenancy, and opposed the adjournment request.

I assume that the 2 applications will be joined to be heard together at a later date, however this hearing is not about unpaid rent or a notice to end the tenancy, and I declined to adjourn.

The landlord's agent and the tenant gave affirmed testimony and the parties were given the opportunity to question each other.

The landlord has provided evidentiary material today, which was not provided to the tenant, and therefore I decline to consider it. The tenant advised that he provided all evidence to the landlord, however the landlord advised that a package was received from the tenant but the landlord returned it to the sender because the envelope was open. I find that the tenant has provided evidentiary material to the landlord. All evidence of the

parties, with the exception of evidence filed by the landlord today, has been reviewed and is considered in this Decision.

During the tenant's testimony, the landlord and the landlord's agent exited the conference call hearing. I halted the proceedings for 5 minutes awaiting their return, however they returned to the call after the tenant's testimony had continued. The landlord and the landlord's agent exited the call 2 more times during the hearing, and during cross examination of the landlord's agent, it was unclear if either of them were in fact on the telephone. The landlord apologized and said that the telephone kept cutting out.

After the third time the landlords exited, I advised that I had heard enough and would be making a Decision based on the testimony already heard and the evidence provided by the parties, but without considering the evidence of the landlords that was provided today.

Issue(s) to be Decided

- Has the tenant established that the landlords' right to enter the rental unit should be limited or allowed conditionally?
- Has the tenant established that the landlords should be ordered to provide services or facilities required by the tenancy agreement or the law?
- Has the tenant established that the landlords should be ordered to comply with the *Residential Tenancy Act* or the tenancy agreement?

Background and Evidence

The tenant testified that this fixed-term tenancy began on March 1, 2017 and reverted to a month-to-month tenancy after April 1, 2018. Rent in the amount of \$2,500.00 per month was payable at the beginning of the tenancy, and the landlords collected a security deposit from the tenant in the amount of \$1,250.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided for this hearing.

The rental unit is a house with a self-contained suite, which the tenant has been sub-letting with the consent of the landlords. The tenant has been managing the suite since the beginning of the tenancy until July, 2020 when the landlords told the sub-tenant that the tenant is a criminal, not allowed to be on the property, and they are now the landlords of the sub-tenant and collect rent cheques from the sub-tenant.

With respect to the application for an order limiting or setting conditions on the landlords' right to enter the rental unit, the tenant testified that on July 5, 2020 the landlords changed the locks to the rental unit, smashed stuff, then called police and reported a break and enter.

The parties attended a hearing on July 21, 2020 and a copy of the Decision has been provided for this hearing. It shows that the tenant had applied for an Order of Possession of the rental unit and recovery of the filing fee. It states, in part: "Even though the tenant fell behind on rent payments, he still made partial payments for the last three months including this month. The landlord accepted these rental payments and therefore the landlord was mistaken in assuming that the tenant had abandoned the rental unit." The tenant was awarded an Order of Possession of the rental unit and the right to sub-let the suite. Since then, the tenant testified, the landlords claim that the Order of Possession has expired, rent is delinquent and the tenancy is "invalid."

On July 28, 2020 the landlords were denied access because no reason was given by the landlords to inspect, and the landlords had already completed an inspection on July 4, 2020 without providing the tenant with a copy of the report. The tenant did not believe the landlords were there to do an inspection.

On August 31, 2020 the landlords changed the locks again. The landlords had told the locksmith that the tenant had abandoned the rental unit, then the locksmith felt bad and called police. The landlord barricaded herself in the house and it took a half hour for the police to get the landlord out of the bedroom. The lock was re-keyed back to the tenant's key.

The tenant seeks an order that the landlords can only enter the rental unit in case of emergency, or with notice by email or registered mail or something that is trackable, and if the tenant is home.

With respect to the tenant's application for an order that the landlords provide services or facilities required by the tenancy agreement or the law, the tenant testified that the July 21, 2020 Decision dealt with the right of the tenant to sub-let. The Decision was also reviewed and upheld. The tenant seeks an order that the tenant be permitted to sub-let the self-contained suite.

With respect to the application for an order that the landlords comply with the *Act* or the tenancy agreement, the tenant testified that the landlords have completed inspections, but lately more often and volatile. The tenant wants a copy of the inspection reports, and that the landlords cease taping notices to the door and windows; notice by email or registered mail is fine. The tenant also seeks an order that the landlords accept e-transfers as it's

always been. However, the landlords have since refused e-transfers, and after some time it's returned to the tenant showing that the recipient hasn't accepted it. The landlords now say they want cheques.

The landlord's agent testified that rent is now \$2,600.00 per month.

July 4, 2020 was a scheduled visit after hearing from neighbours that the tenant was moving out of the City. When he arrived for the inspection, the landlord was shocked to see that furniture was gone and closets were empty, but the tenant showed up.

On August 31, 2020 the landlord's agent and her husband arrived on site after hearing from a neighbour that the tenant had abandoned. The landlord used his key but it didn't work; the tenant had changed the lock without telling the landlords, and the landlord contacted a locksmith.

The landlord's agent further testified that the sub-tenant is paying the landlord directly \$1,000.00 per month. The sub-tenant was told that the tenant was moving, so the sub-tenant signed a 1 year lease with the landlords. The landlord's agent referred to a copy of an email provided for this hearing from the tenant to the landlord and the landlord's agent dated June 4, 2020, with a highlighted paragraph that states: "The suite was rented independently to a health care worker so that you would get some money instead of leaving it empty and you collecting nothing these past several months. It is your tenancy as you have collected the deposit and monthly rent and it is separate from the agreement that we share." The landlord is in agreement with the tenant sub-letting the self-contained suite, but only ask that he pay the rent.

With respect to the tenant's application for an order limiting or setting conditions on the landlords' right to enter the rental unit, the landlord's agent testified that the tenant resides in a different city and is just holding onto this suite. The lease says 4 people would reside in the rental unit, including the tenant's wife and 2 kids. There are insurance issues if no one is there.

The sub-tenant is afraid of him and he has entered her suite in the past while she was there. The tenant removed a lock, and the landlords put on a dead-bolt on her side. Further, on September 2, 2020 the tenant turned off her power. She put a note on the door that she was scared of him and she left. The landlords did 2 inspections in July out of concern about abandonment and the tenant is not meeting his financial obligations. The landlords agree that they can only enter in accordance with the *Residential Tenancy Act*.

With respect to the tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law, the landlord's agent testified that the issue was that tenant wanted to enter the home of the sub-tenant, but she's afraid of him.

The tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement is not disputed. The landlords need to resolve access because the tenant has the only key and he doesn't want to give the landlord a copy, and the sub-tenant doesn't want to give the tenant a copy of her key.

Analysis

Firstly, as a matter of law, it's important that, knowing about a previous Decision of the director, that I not make any findings of law that are contrary to what's already been ordered or decided upon. I have reviewed the Decision dated July 21, 2020 and I agree with the Arbitrator that partial rent payments had been made, and whether or not there was sufficient furniture in the rental unit to satisfy the landlords, the tenancy agreement was for the entire house. It makes no difference whether or not the tenant has paid "his share," but the tenant is the landlord of the sub-tenant, so any rent money accepted by the landlords is a portion of the amount required under the tenancy agreement.

The landlord's agent testified that based on the tenant's email dated June 4, 2020, the landlords commenced another lease with the tenant's sub-tenant, and now the landlords have 2 tenancy agreements for the same self-contained suite, which is not legal. I also note that the landlords didn't start the new tenancy agreement with the sub-tenant until August 1, 2020, almost 2 months after the landlords received the tenant's June 4, 2020 email.

I find that the landlords are frustrated about not receiving the full amount of rent each month, and I accept that the landlords are concerned that the tenant may flee without paying the arrears. However, the law specifies how a tenancy ends, and as long as any rent is received for the address noted on the tenancy agreement, the rental unit has not been abandoned. The landlords are in agreement with the tenant sub-letting the self-contained suite, and I grant the tenant's application for an order that the landlords provide services or facilities required by the tenancy agreement or the law.

The landlord has changed the locks to the rental unit, considering it abandoned, on 2 occasions. The July 21, 2020 Decision also spells out Section 31 which prohibits a landlord from changing locks. The *Act* also specifies that a tenant may not change the locks and **I order the tenant to provide the landlord with a key that gives the**

landlord access in case of emergency, and I order that the tenant ensures that the landlord receives the key by next Monday, September 14, 2020. I order that the landlords may enter the rental unit only in the following circumstances:

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 also order that the landlords may not consider the rental unit abandoned unless no rent has been paid by either the tenant or the sub-tenant, and all items belonging to both the tenant and the sub-tenant have been removed.

With respect to the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement, the tenant testified that he wants a copy of the inspection reports, and that the landlords cease taping notices to the door and windows; notice by email or registered mail is fine. The law does not require a landlord to provide a tenant with copies of inspection reports except at the beginning and end of the tenancy.

The tenant also seeks an order that the landlords accept e-transfers. A landlord must not refuse rent regardless of how it's paid by the tenant, and I order the landlords to accept e-transfers or any other method of payment the tenant chooses.

The landlord's agent expressed concern about access, and testified that the sub-tenant fears the tenant. However, the tenant testified that the landlord told the sub-tenant that the tenant is a criminal, among other things. The sub-tenant now has a dead-bolt on the inside of the self-contained unit which prevents the tenant from entering. I decline to make any further orders that may affect a tenant who did not attend and is not a party to this hearing, however in a sub-lease arrangement, the tenant becomes the landlord of the sub-tenant, and the law is very clear about how a tenancy ends. There is no evidence before me that the tenancy between the tenant (as landlord) and the sub-tenant has ended, and therefore it continues. I order that the tenant (as landlord) comply with Section 29 above as it relates to the sub-tenant.

Since the tenant has been successful with this application, the tenant is entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rent by that amount.

Conclusion

For the reasons set out above, I hereby order the landlord to comply with Section 29 as set out above, and to provide the tenant with sufficient notice by email or registered mail. If provided by email, it is deemed to have been received by the tenant 3 days after sending it, and if provided by registered mail, it will be deemed to have been received by the tenant 5 days after mailing.

I also order that the landlord may not consider the rental unit abandoned unless no rent has been paid by either the tenant or the sub-tenant, and all items belonging to both the tenant and the sub-tenant have been removed.

I hereby order the landlord to provide the tenant with the self-contained suite as a sub-let, by consent.

I further order the landlord to accept any method of payment for rent that the tenant chooses.

I further order the tenant (as landlord to the sub-tenant) to comply with Section 29 as set out above.

I further order that the tenant be permitted to withhold \$100.00 of rent as recovery of the filing fee.

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: September 11, 2020

Residential Tenancy Branch