



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RA ANN ENTERPRISES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 16, 2020, wherein the Tenant requested monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 8, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also assisted by an Articled Student, M.W.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

This tenancy began February 2006. Monthly rent is \$464.30.

The parties attended a hearing before me on March 16 and May 14, 2020 following which I rendered a Decision on May 27, 2020. Pursuant to that Decision, the Landlord was ordered to provide the Tenant with a key to the front door of the rental building by no later than June 1, 2020. For clarity I reproduce the relevant portions of that Decision:

“...The Notice also indicated that the Tenant was using the front door. In this regard, S.B. stated that “it has always been the rule that the Tenants use the back door, not the front” door, and that this was a rule created by her father...

In response to the Landlord’s claim that the Tenant uses the front door, the Tenant stated that she asked the Landlord why they aren’t supposed to use the front door and the Landlord simply responded, “that’s the way it always has been”...

The Landlord also seeks to end the tenancy on the basis that the Tenant uses the front door. In terms of the reasons for this rule, S.B. stated that her father insisted on this when the tenancy began and that this is the way that it has always been.

The use of the words *significantly, unreasonably, seriously, and significant* in section 47(d) of the *Act* indicate the evidentiary burden a Landlord must reach when asking to end a tenancy for cause. Even in the event I was provided a valid reason for this prohibition, which I was not, I find no basis whatsoever to support the Landlord’s request that this tenancy end due to the Tenant using the front door. I find the Tenant should be permitted to use the front door to the rental building, as this historical prohibition is unjustified and unreasonable. I find this prohibition to be of no force and effect...

I find the Tenant and her guests are entitled to an Order that they be able to access the rental unit from the front door. As noted, I was not provided any justification from the Landlord in terms of this historical prohibition. **I therefore Order the Landlord to provide the Tenant with a key to the front door lock by no later than June 1, 2020.**

The parties attended a further hearing on August 7, 2020. In that claim the Tenant sought monetary compensation from the Landlord for breach of her right to quiet enjoyment. The Tenant also sought an Order that the Landlord comply with my May 27, 2020 Decision. By Decision dated August 12, 2020, the Landlord was cautioned that failure to provide a key to the Tenant would result in a charge of \$10.00 per day payable to the Tenant. Again, for clarity I reproduce the relevant portions of that Decision:

The tenant also seeks an order for the landlord to comply with a Residential Tenancy Branch Order to provide the tenant with a front door key pursuant to a Residential Tenancy Branch File (noted on the cover of this decision). The landlord stated that she has not complied with the order as the tenant does not need access through this door and that it is more convenient to the tenant to use the rear door. Extensive discussions on this issue were made by both parties. The landlord confirmed that she understood the previous order and that she just does not wish to comply. The landlord was advised that complying with that order was not an option. On that basis, the landlord was advised to provide a key to the front door of the rental property within 24 hours of this hearing. The landlord was cautioned that if the landlord did not comply that the landlord would be subject to providing compensation to the tenant in the form of \$10.00 per day until the landlord complied by giving a key to the front door for access. The landlord stated that she understood and would comply. In the event that the landlord fails to comply with this direction, the tenant may apply for dispute resolution for a monetary claim.

The tenant provided in evidence a photo of an envelope posted to her door upon which is written:

“[Tenant’s first name]
Posted on door September 25, 2020 10:20 p.m.
We gave you a key on July 21/20 in an envelope and you still have it.”

The Tenant submitted that the above was false as the Landlord admitted during the August 7, 2020 hearing that she did not provide a key to the Tenant.

In the hearing before me, the Landlord claimed to have provided the Tenant with a key on August 8, 2020. The Tenant stated that a key was provided to her but stated that it didn’t work. She testified that she told the Landlord, A.B., during a telephone conversation on August 9, 2020 that the key didn’t work and informed her again on the 10th as well. She stated that the Landlord told her she was an idiot. The Tenant claimed neither of the Landlords attended the rental unit to see if the key worked.

The Tenant testified that she also sent four letters to the Landlord wherein she informed the Landlord that the key didn’t work and reminds the Landlord that she was to provide a key to the front door. The tenant also reminded the Landlord that the key did not work.

The Tenant confirmed that she is seeking \$1,530.00 from the Landlord from August 8, 2020 to January 8, 2021 at a rate of \$10.00 per day as suggested by Arbitrator Lam on August 7, 2020.

The Landlord responded to the Tenant’s claims as follow.

The Landlord confirmed she was at the hearing in March and May 2020. The Landlord stated that she provided the Tenant with a key on August 8, 2020. When asked why she didn't provide the Tenant with a key by June 1, 2020, as ordered, the Landlord stated that it was a "security issue" and claimed it was not a safe thing for the Tenant to have a key.

The Landlord confirmed she was informed that the key didn't work. She claimed that the Tenant never called her, but stated she received a phone call, approximately one month later, from a "lady at the Residential Tenancy Branch compliance department" informing her that the key didn't work. The Landlord also confirmed that she did not attend the rental unit to see if there was something wrong with the key.

The Landlord also stated that the Tenant never told her that it never worked. She stated that she felt that it was "up to the Tenant to inform the Landlord" not the RTB.

The Landlord's Agent submitted that a key was provided to the Tenant and "whether it worked or not, the Tenant has still had access to the rental unit."

The Landlord's Agent also stated they were taking matters to the "next step" as they believe the matters should be reopened on the basis the Landlord was not provided a fair hearing in March and May 2020.

The Landlord's Agent further submitted that the Landlord was not aware, for quite some time, that the key didn't work, she didn't know until the compliance officer called her and she received this Application.

The Landlord's Agent confirmed they have issued another Notice to End Tenancy on November 28, 2020 and a hearing is scheduled for February 22, 2021.

Analysis

The Tenant seeks monetary compensation for lack of access to the rental unit front door. By Decision dated May 27, 2020 the Landlord was ordered to provide a key to the Tenant. A further hearing occurred on August 7, 2020 wherein the Landlord was warned that failing to provide a key to the Tenant may result in \$10.00 a day payment to the Tenant. In the hearing before me the Tenant sought this payment from the date of the first Decision to the hearing, as well as for every day following in which the Tenant is not provided with a working key to the front door.

At the hearing before me the Landlord was assisted by an Articled Student who submitted that the Tenant was not denied access to her rental unit. The issue of the Tenant's entitlement to the front door key was dealt with by Decision dated May 27, 2020. As discussed during the hearing, there is no opportunity to revisit or relitigate that matter. Had the Landlord been displeased with that Decision, the Landlord was at liberty to apply for Judicial Review. Until that Decision is set aside or varied by the B.C. Supreme Court, the Landlord must comply.

I am satisfied, based on the evidence before me that the Landlord did not provide the Tenant with a key until the day after the August 7, 2020 hearing. The Decision of August 12, 2020 confirms the Landlord understood she was to provide a key to the Tenant by June 1, 2020, did not provide a key, and did not wish to comply with the May 27, 2020 Decision.

I am also satisfied that the key provided to the Tenant on August 8, 2020 by the Landlord did not work. I accept the Tenant's testimony that she called the Landlord the next day and informed them the key didn't work. I also accept her testimony that she brought this to their attention in writing. Where the testimony of the parties diverges on this issue, I accept the Tenant's. I find it more likely the Landlord did not address the malfunctioning key as she believes the Tenant should not have a copy. She communicated this position at the hearing in August as well as during the hearing before me on January 8, 2021. I do not accept the Landlord's testimony that she was not aware the key did not work until receiving a call from the Residential Tenancy Branch. Yet, even if that were the case, incredulously, she did not provide a working key to the Tenant after this call and stated during the hearing she felt it was the Tenant's responsibility to call her, not the Branch.

I find the Landlord has continued to deny the Tenant access to the front door and the Tenant is entitled to compensation pursuant to section 65(1)(3). I therefore award her the sum of **\$2,220.00** calculated as follows: \$10.00 per day from June 1, 2020 (the date Landlord was to provide a key to the Tenant pursuant to the May 27, 2020 Decision) to January 8, 2020 (date of the hearing before me) = \$2,220.00.

As the Tenant has been successful in her Application, I award her recover of the \$100.00 filing fee for a total award of **\$2,320.00**. I Order, pursuant to section 72 of the Act, that the Tenant recover the amount owing to her by reducing her rent until the amounts awarded are recovered.

The Tenant is also entitled to a further \$10.00 per day rent reduction from January 9, 2020 onwards and may continue to reduce her rent by this sum until the Landlord brings an Application to the Residential Tenancy Branch and an Arbitrator confirms the Landlord has complied with this Order and Orders this rent reduction to cease.

Should the tenancy end prior to the Tenant being reimbursed these sums, the Tenant shall be at liberty to seek a Monetary Order for the balance due.

Conclusion

The Tenant's Application is granted. She is entitled to the sum of \$2,300.00, which includes a \$10.00 per day rent reduction for the 222 days from June 1, 2020 to January 8, 2021 as well as recovery of the filing fee. The Tenant is also entitled to reduce her rent by \$10.00 per day from January 9, 2021 until such time as an Arbitrator orders this rent reduction to cease.

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: February 3, 2021

Residential Tenancy Branch