



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, LRE, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlord confirmed that they received copies of the tenant's dispute resolution hearing package and written evidence package sent by the tenant by registered mail on January 21 and February 11, 2021, I find that the landlord was duly served with these materials in accordance with sections 88 and 89 of the *Act*. The landlord confirmed that they did not provide any written submissions for this hearing.

During the hearing, the tenant advised that since the tenant applied for dispute resolution, all of the repair issues have now been addressed by the landlord to the tenant's satisfaction. On this basis, the tenant confirmed that they were withdrawing their application for repairs of the rental unit. This portion of the tenant's application is hereby withdrawn.

Issues(s) to be Decided

Should an order be issued to the landlord to restrict the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

On December 1, 2019, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from December 1, 2019 until December 1, 2020. When the initial term expired, the tenancy continued on a month-to-month basis. Monthly rent is set at \$900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's security deposit of \$450.00.

In addition to repairs that the tenant had requested, the tenant described their concerns about the landlord's ongoing entry to the rental unit to retrieve mail as follows in their application for dispute resolution:

(The landlord) will enter the apartment whenever she wants without notice to grab mail. This feels like an invasion of my privacy and she clearly doesn't know the rules. I just want a heads up of 24 hours and then she can come, but walking in freely and unannounced feels very invasive.

The landlord did not deny the tenant's description of this issue as outlined above. The landlord said that they only attend the rental unit to pick up mail when the other tenant in this rental building advises the landlord that mail has been delivered to the landlord at this rental property. The landlord questioned the fairness of having to provide notice to the tenant when they would be entering the rental unit to pick up mail because this had not been included in the original contract with the tenant.

The tenant said that he would be satisfied if the landlord sent him notification by email that the landlord would be attending the rental unit to pick up their mail at a specified time, at least 24 hours after the email was sent to the tenant. The landlord confirmed that they had the tenant's email address and that they would send the tenant 24 hours notice by email when they would be entering the rental unit to pick up their mail.

In addition to the recovery of the filing fee, the tenant asked for reimbursement of their registered mailing costs.

Analysis

Section 29 of the *Act* reads in part as follows, which places restrictions on a landlord's right to enter a rental unit where they do not also reside:

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;...*
- (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).

Section 70 of the Act reads as follows:

70 (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.*

In this case, there is undisputed evidence that the landlord has been entering the rental unit on an ongoing basis without first providing the tenant with at least 24 hours written notice to do so. At the hearing, I informed the landlord that this is a provision of the Act and does not need to be included in the tenancy agreement.

The tenant has agreed to consider an email sent to them by the landlord as written notice advising that the landlord intends to enter the rental unit to retrieve the landlord's mail.

I make the following orders pursuant to sections 29 and 70 of the *Act*:

1. I order the landlord to provide at least 24 hours notice by email to the tenant at the tenant's email address whenever the landlord has occasion to retrieve mail that has been delivered to the landlord at the address of the rental unit: I order that this email notification is to comply with the provisions of paragraph 29(1)(b) of the *Act*.
2. I order that the landlord's email to the tenant is to be sent at least 24 hours and not more than 30 days before the entry.
3. I also order the landlord to include in their email to the tenant:
 - the purpose for entering, which must be reasonable; and
 - the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...

These same provisions are also in place for any other need that the landlord may have to enter the rental unit, except where an emergency exists and the landlord needs to enter the rental unit to protect life or property.

In making these orders, I have included the full wording of section 29 of the *Act*, as the landlord was clearly unfamiliar with the provisions restricting a landlord's right to access a rental unit where they were not residing.

Although I have no power to require the landlord to change their mailing address to limit the number of mail deliveries to them at the rental property, the landlord may also wish to consider changing their mailing address for those pieces of correspondence they have been receiving at the rental address. This option would reduce the need to retrieve mail at the rental property.

Since I am satisfied that the repairs conducted by the landlord have occurred in response to the tenant's application and the tenant clearly needed to apply for orders restricting the landlord's right to enter the rental unit, I allow the tenant's application to

retrieve the \$100.00 filing fee they incurred from the landlord. As mentioned at the hearing, recovery of the filing fee is the only hearing related fee which applicants can obtain from the other party.

As this is an ongoing tenancy, I order the tenant to withhold \$100.00 from a future monthly rent payment as a means of implementing this monetary award.

Conclusion

I order the landlord to provide at least 24 hours notice by email to the tenant at the tenant's email address whenever the landlord has occasion to retrieve mail that has been delivered to the landlord at the address of the rental unit. I order the landlord to send this email to the tenant advising of the landlord's entry into the rental unit at least 24 hours in advance and not more than 30 days before the entry.

I order the landlord to include in the above email to the tenant:

- the purpose for entering, which must be reasonable; and
- the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...

I order the tenant to recover their \$100.00 filing fee from the landlord by reducing this amount from a future monthly rent payment.

The tenant's application for repairs is withdrawn as the landlord has taken measures to address the tenant's concerns with respect to this matter.

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 09, 2021

Residential Tenancy Branch