



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LAT

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 24, 2021. The landlord stated that he was not served. The tenant stated that she had submitted a copy of the Canada Post Registered Mail Receipt and the Customer Receipt Tracking label as confirmation. The landlord repeated that he was not served with the package. As there is a dispute between the parties on service of the hearing package and the submitted documentary evidence, the tenant was asked to provide the Canada Post Tracking Number to be reviewed on the Canada Post Online Tracking website. Both parties confirmed the correct mailing address was used by the tenant for this package. The online website shows the package received by Canada Post on January 24, 2021 and delivered on January 26, 2021. On this basis, despite the landlord's argument that he was not served, the landlord is deemed sufficiently served as per sections 88 and 89 of the Act. Both parties were advised that if during the hearing the tenant referred to documentary evidence, the landlord would be provided a detailed description on the evidence and an opportunity to respond to it. Both parties stated their understanding.

At the outset, the tenant's application was clarified. The tenant has requested an order for the landlord to comply. The tenant provided written details which states in part,

The question asked if I had other issues with the landlord and the answer is yes- I have another dispute resolution pending regarding the restriction of services/facilities related to the lack of hot water in the laundry room.

[reproduced as written]

The tenant confirmed that this was made in error and could be cancelled, however the tenant referred to a monetary claim made. A review of the tenant's application does not specify a monetary claim. However, after some discussion the tenant stated that she had submitted a completed monetary worksheet as part of her evidence. The tenant was advised that merely submitted evidence of details of a monetary claim were not the same as filing an application for a monetary claim. As such, no monetary claim was filed and will not be attached to this hearing. The tenant was advised that she was free to file a separate application for a monetary claim in the future.

Extensive discussions took place on the tenant's request to change the locks to the rental unit. The tenant stated that she in fact wishes to have the landlord comply with section 29 of the Act. As this was the root of the main issue and related, the tenant's application is amended by consent to suspend or set conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2009 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 1, 2009. The monthly rent was \$830.00 payable on the 1st day of each month. A security deposit of \$425.00 and a pet damage deposit of \$213.00 were paid.

The tenant provided testimony that the landlord has entered the rental unit without prior proper notification to the tenant. The tenant referred to the last occasion on December 18, 2019 on which the landlord had emailed the tenant that he would be attending the rental unit to install some weather stripping. The tenant stated that she found the email was at work on December 18, 2019 that the landlord would attend later that day. The tenant inquired with the landlord as she was not home when he would attend. The tenant stated that no reply by the landlord was made. The tenant stated that when she returned home she discovered that the landlord had attended and entered the rental unit. The tenant stated that this was the last incident of many occasions that had occurred previously. The tenant stated that she has the right to expect privacy from the landlord.

The landlord disputes this claim stating that notice to enter the rental unit for the weather stripping was given the day before via email.

The tenant confirmed that an email was received the day before, but that it was for the landlord to attend on that same date. The tenant stated that the landlord did not attend on that occasion.

The landlord confirmed the tenant's details stating that he was responding to the tenant's request for weather stripping.

During the hearing discussions were made in which it appeared that a mis-communication had occurred. Both parties were advised that the landlord's notice on December 17, 2019 was valid only as the tenant gave permission on that same date. The landlord was advised that as he did not attend that the notice was not valid for the next date on December 18, 2019. The landlord stated that he now understood.

As such, discussions took place and both parties agreed to abide by Section 29 of the Act.

Analysis

Section 29 of the Act states in part that a landlord's right to enter a rental unit is restricted. 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).

On this basis, both parties consented to abiding by section 29 of the Act for the landlord's right to enter the rental unit. The landlord was also cautioned that this hearing serves notice to the landlord that if he fails to comply the landlord may be subject to a dispute resolution being filed for the loss of quiet enjoyment in the form of a monetary claim that the tenant may make in the future.

Conclusion

Both parties confirmed their understanding of Section 29 of the Act and that they would both abide by it concerning the landlord's right to enter the rental unit.

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: April 20, 2021

Residential Tenancy Branch