



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hillcroft Apartments Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: LRE, LAT, OLC, FFT

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 55;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 63; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

JH ("landlord") represented the landlord in this hearing, while the tenant attended the hearing with their advocate AP. 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with the *Act*?

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

Should the tenant be given authorization to change the locks to the rental unit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2004. Monthly rent is currently set at \$825.00, payable on the first of the month. The landlord currently holds a security deposit of \$292.50 for this tenancy. The tenant testified that he had first moved into the building in 2001, and moved to this specific rental unit in 2004. The current owner of the property took possession of the property in 2012.

The tenant filed this application for dispute resolution after he had discovered another resident using his dolly without his knowledge or permission. The tenant testified that in 2003 he was given exclusive use of a storage room on the third floor by the building manager and owner at the time. The tenant testified that he had exclusive use of this storage room since then. It is undisputed that other tenants in the building have access to a different storage facility where they can place their own locks on the storage lockers.

The tenant testified that although there was no sign of a break-in or forced entry, the landlord or their employees must have used their access to allow someone to take his dolly. The tenant did not observe anyone taking his dolly, but it is undisputed that the other tenant was found to be using his dolly that day. The tenant states in their application that they had discovered the storage room unlocked on at least three occasions. The tenant believes that there have been unlawful entry into the storage room. The tenant testified that he was unaware at the time that the other tenant was an employee of the landlord who acted in the role of a relief manager as well as cleaning staff. The landlord and their employees have keys that can access the storage room and all rooms in the building. The tenant testified that this was the only possible way that the tenant had possession of his dolly. The tenant testified that he did lend his dolly for others to use, but that was with his knowledge and permission.

The landlord testified that they had investigated the matter, and interviewed the tenant in question. The landlord testified that the tenant explained that they had found the hand dolly unsecured in the tenant storage room, where it had been for months. The tenant had assumed that the dolly belonged to the building or management for tenants to use. The tenant was able to retrieve his dolly, and confirmed in the hearing that there have not been any future incidents involving the tenant's dolly.

The tenant is concerned about the security of his personal belongings, which the tenant testified cannot fit in their rental unit or the other storage facilities available. The tenant testified that the only other alternative was off-site storage, which would cost the tenant money. The tenant is requesting an order that they be allowed to change the locks, and restrict the landlord's access to the storage room, and only allow reasonable access with twenty-four hour's written notice, and with the tenant present.

The landlord denies that they, or their employees, have accessed the storage room unlawfully. The landlord does not dispute that they have keys to access the storage room, but that they must do so in order to comply with fire safety regulations, and for insurance purposes. The landlord testified that it is not always possible to give twenty-four hours notice to enter due to the nature of the storage room, and that they needed to retain the right to access this room for those specific reasons. The landlord testified that they had fulfilled their obligations by investigating the incident, and found no evidence of illegal activity. The landlord testified that they were willing to provide the tenant with a second storage locker free of charge where the tenant may use their own locks to lock up their personal belongings. The landlord testified that the tenant was the only tenant who had access to a storage room like this one.

Analysis

In consideration of the testimony and evidence before me, I do not find that there has been a contravention of the *Act* or tenancy agreement by the landlord or their employees. Although there may be a dispute between the parties about the tenant's right to use the storage room, that issue is not before me. I therefore decline to make any orders about the tenant's right to use the storage room.

It is undisputed that the tenant currently has access to use a storage locker, which the tenant has a key to, as well as the landlord. The landlord testified that they need to retain access for legal and safety reasons, and that there is no possible way due to the location and layout of the room to allow the tenant to change the locks, and prevent the landlord from accessing the room for those specific reasons. The landlord denies any

involvement in unlawful activity involving the storage room and tenant's belongings, and testified that they did investigate the alleged theft, and was provided a reasonable explanation by that party.

The tenant concerned about the safety and security of their personal belongings, and testified that they could not accept the offer of the landlord to use a second storage locker in addition to this room as they required the space. The tenant also felt that the other storage locker facility was less secure.

I note that although the *Act* does allow the tenant to request an order to change the locks to their rental unit, in this case the facility in question is a storage room, and not the tenant's specific rental unit.

Section 27 of the *Act* states the following about the termination or restricting of services or facilities:

Section 27 Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) the storage room is considered a qualifying **services or facility as** stipulated in the **Definitions** of the *Act*.

Although the landlord has expressed concern about the tenant's right to use a facility that is unlike the others used by other tenants, I find that the landlord has not restricted or removed the tenant's access at this time, and the tenant continues to retain the right to use this facility.

The *Act* does provide for the following rights of the tenant, which I do not find to have been contravened by the landlord at this time.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

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).

RTB Policy Guideline 7 states the following about the changing of locks:

The Act¹ allows the tenant to request that the locks be changed at the beginning of a new tenancy. The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks in this circumstance.

As noted, the right to change the locks or request that the locks be change pertains to the tenant's specific rental unit. Either way, I do not find there to be a contravention by the landlord. I must now assess whether the tenant is entitled to the orders requested.

In light of the evidence before me, although I understand that the tenant is troubled and concerned about the unexplained possession of his personal dolly by another resident, and his belief that someone had left the door unlocked on several occasions, I am not satisfied that the evidence sufficiently shows that the dolly was unlawfully removed by the landlord or landlord's employees.

Furthermore, I find that the landlord had provided a valid and reasonable explanation for why they must retain access to the storage room. I find that it is necessary that the landlord retains the right to access the storage room for safety reasons and to comply with fire code and insurance purposes, and I do not find that the evidence supports that access has been used for any other reason.

Lastly, I find that the landlord, in good faith, has tried to work with the tenant, and provide a solution, which unfortunately does not suit the tenant's needs. In consideration of the seriousness of this matter, where the tenant's belongings may have been unlawfully taken, I have considered the risk of future incidents if the locks were not changed, or if the landlord's access was not restricted. The tenant testified that there have not been any future incidents involving his storage room. Despite the tenant's concerns, I am satisfied that there is no current or immediate risk to the tenant's property or security if the landlord retains the same level of access. Accordingly, the tenant's application for the requested orders are all dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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 23, 2021