



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, LAT, FFT

Introduction

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

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable the landlords to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that she is not recording this dispute resolution hearing.

The tenant confirmed her email address for service of this decision.

The tenant testified that the landlords were each served with a copy of this application for dispute resolution via registered mail on June 10, 2021. Registered mail receipts

stating same were entered into evidence. The tenant testified that the landlords did not pick up their registered mail. The tenant entered into evidence a tracking report which states that a notice card was left for the landlords on June 11, 2021 and that the landlords did not retrieve their registered mail from the post office.

Residential Tenancy Branch Policy Guideline #12 (PG #12) states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on the tenant's testimony and the registered mail receipts entered into evidence I find that the landlords were each served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*. Pursuant to section 90 of the *Act* and PG #12, I find that the landlords were deemed to have received the tenant's application for dispute resolution on June 15, 2021, five days after their mailing. The landlords' refusal to pick up their registered mail does not override the section 90 deeming provision.

Issues to be Decided

1. Is the tenant entitled to an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
2. Is the tenant entitled to change the locks, pursuant to section 31 of the *Act*?
3. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
4. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on September 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that her landlord has, on two occasions, entered the subject rental property without the notice required in the *Act*. The tenant provided the following written timeline of events which she testified to in the hearing:

- April 14, 2021: landlord entered my rental unit without my knowledge and without giving any notice. There was no emergency.
- April 19, 2021: [Landlord W.B.] verbally accosted me in driveway when I asked for a signed copy of the move-in inspection report. I am scared going to and from my rental unit and answering the door lest he accost me again. Every night I jam a chair and heavy box against the door lest the landlord enter while I am showering or sleeping.
- May 3, 2021: I wrote Mr. Barnaby a warning letter and sent it to him on May 4, 2021 via registered mail re how to give proper notice and that all communication must be in writing.
- May 11, 2021: landlord entered my rental unit again without giving proper notice: landlord left notice letter on bookshelf next to couch in living room on 2nd floor.
- May 13 & 14, 2021: I discovered 18 photos of rental unit posted to real estate website [name of website redacted for privacy]. Pictures are further evidence that landlord entered May 11, 2021, without proper notice and he moved 7 of my personal items to take photos of suite. Landlord endangered my safety by posting pictures online which included my personal identifying information: university degrees, name and address to real estate website.
- May 15, 2021: I spoke to a lawyer who advised me to: file for dispute resolution with RTB to have the locks changed, contact RCMP re section 219 of criminal code (reckless endangerment), contact Identity Theft Case Manager and OIPC. After my phone call with lawyer, I discovered all 18 pictures of rental unit were removed from real estate website.

- May 16, 2021: I called but RCMP [city name redacted for privacy] detachment was closed. I started my Application for Dispute Resolution. Requested follow up appointment with lawyer.
- May 17, 2021: I made a report to RCMP: [file number redacted for privacy]
- May 18, 2021: I spoke to an Identity Theft Case Manager who advised contacting Canada Post, Equifax and TransUnion. I spoke with the RCMP again and lawyer again. I also contacted [name of locksmith redacted for privacy] for a quote on price to change locks when authorized.
- May 19, 2021: Three pictures of my rental unit were added to [real estate] website by landlord. I contacted Canada Post, Equifax and TransUnion to have an alert put on my credit file. I also contacted the OIPC and spoke with the lawyer for a third time.
- May 21, 2021: I spoke with OIPC and started OIPC process. Landlords disregarding my request for no in-person communication and calling out to me when I try to walk from my car to my rental suite on May 21 and 22, 2021.

The tenant testified that on April 14, 2021 she came home to find her food order inside the door of the subject rental property instead of outside where she expected it. The tenant entered into evidence a text message exchange between the tenant and landlord W.B. dated April 14, 2021 as follows:

Tenant: Hi. Was there any reason you needed access to my apartment today?

Landlord: I put your food in out of the. Sun. Never went in just put inside. Do you not wish us to do that?

Tenant: Thanks for your thoughtfulness. It comes with lots of ice packs so it's safe outside until I get home.

Landlord: 10.4

The tenant testified that on May 3, 2021 the landlord texted her. The May 3, 2021 text message was entered into evidence and states:

Hi [tenant]. Wanted to keep u apprised tomorrow.. Tue around noon realtor will be taking pictures of the outside only.. they will do the inside. Next week. Not sure time and date yet but I will let you know. Thanking you in advance for photo your suite. And for allowing us access. If you require a formal 24 hr notice please advise and I will put it in writing.

The tenant testified that on May 4, 2021 she sent the following letter to the landlord via registered mail:

On April 14, 2021, despite the lack of any emergency, you illegally and unlawfully entered my rental unit at [address of subject rental property], without my knowledge or permission and without giving me any notice, a direct violation of section 28 and 29 of the Residential Tenancy Act. You broke my trust and your actions left me feeling vulnerable and personally violated.

On the afternoon of April 19, 2021, I politely inquired (for the fourth time since I moved in) on when I could get a copy of the signed move-in inspection report, due within 7 days of the move-in inspection completed August 30, 2020 (See #RTB-27). As witnessed by bystanders, you responded by yelling at me, bullying me and demeaning me, leaving me in tears and feeling even more vulnerable, as well as unsafe both physically and emotionally. I no longer feel safe going to and from my rental unit or answering the door, lest you accost me again. To date, I have received no apology from you for your unjust, inappropriate and condescending behaviour.

As a result of you abuses of power, I feel extremely unsafe and uncomfortable allowing unnecessary pictures to be taken of my private space, particularly when you already have more than enough and more than suitable pictures* of the rental unit for your real estate agent to list and successfully sell your house (*pictures you used to advertise the rental unit in August 2020).

If potential buyers require access to view the rental unit, please be aware of the **service provisions** in section 90 ("When documents are considered to have been received") as well as section 88 and section 29 of the Residential Tenancy Act on how to give proper notice.*

However, given that I work in several different [redacted for privacy], which have all had multiple COVID-19 exposures, and that I will be present at all viewings of

the rental unit per my rights ** under the Residential Tenancy Act, potential buyers may prefer not to enter the rental unit but instead find the photos from August 2020 more than sufficient.

Finally, all communication in future must be in writing in accordance with the law: text messages are **not** recognized by the legislation and as such, I will not longer accept text messages, nor emails, phone calls or in-person communication from you.

The tenant entered into evidence the Canada Post registered mail receipt dated May 4, 2021 for the above mailing. The tenant entered into evidence the Canada Post tracking receipt for the above mailing which states that the notice card was left for the landlords on May 5, 2021 and the landlords did not pick up their registered mail.

The tenant entered into evidence a text message from the landlord dated May 5, 2021 which states:

Hi [tenant] Confirmation Inside photos Tue 11 May Is that OK, ?

The tenant testified that she did not respond to the above text message because it was not in writing.

The tenant entered into evidence a text message dated May 10, 2021 from landlord W.B. which states:

Hi [tenant]. I put a formal note at your door for realtor photos tomorrow. I thought if we get photos we won't have to bother you in future showings. Thanks

The tenant testified that she found the notice of entry referred to above inside her home on her bookshelf on May 12, 2021. The tenant entered into evidence the landlord's notice of entry which is dated May 10, 2021 for entry on May 11, 2021. The tenant testified that she did not agree to the landlord's entry to take photographs on May 11, 2021 and the notice of entry was not served properly.

The tenant testified that the landlord took photographs of the subject rental property without her permission on May 11, 2021, moved her belongings without her permission and posted photographs of the subject rental property in which her personal possessions and identifying items can be seen. The tenant entered into evidence the

identifying photographs the landlord uploaded to a real estate website. The tenant testified that the landlord later removed the identifying photographs from the real estate website.

The tenant testified that she does not have evidence that the landlords have entered the subject rental property since May 11, 2021.

The tenant testified that she has filed two police reports, the first on May 17, 2021 regarding the landlord's illegal entry and the second in August 2021 when landlord C.B. took pictures of the tenant and the subject rental property from the garden. The tenant testified that the RCMP offered to speak to the landlord on May 17, 2021 but the tenant testified that she thought this might make things worse, so she declined. The tenant testified that after the August 2021 incident the RCMP spoke with the landlords.

Analysis

Section 29(1) of the *Act* states that 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.

Section 29(2) of the *Act* states that a landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

Residential Tenancy Branch Policy Guideline #12 states:

The date on which documents served are deemed to have been received differs depending on the method of service used. This should be taken into account when determining which method of service to use. For example, a landlord providing notice to enter a rental unit or manufactured home site must consider that notice served by posting on the door is not deemed to have been received until three days after posting it. As the Legislation requires 24 hours' notice of entry, the landlord must serve a notice at least four days prior to entry.

Based on the tenant's undisputed testimony, I find that the landlords breached section 29(1) of the *Act* by entering the subject rental property without the tenant's permission and without 24 hours written notice served on the tenant in accordance with section 88 of the *Act*, on April 14, 2021 when the landlord put the tenant's food delivery inside.

I accept the tenant's undisputed testimony that she found the landlord's notice of entry dated May 10, 2021 inside the subject rental property on May 12, 2021 and was thus not provided with the 24 hours' notice required under section 29(1) of the *Act*. I find that the landlord did not serve the tenant with the notice of entry in accordance with section 88 of the *Act*. I find that the landlord was not authorized, in accordance with section 29(1) of the *Act* to enter the subject rental property on May 11, 2021.

Section 62(3) of the *Act* of the *Act* states:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Pursuant to section 62(3) of the *Act*, I Order the landlord to comply with section 29(1) of the *Act* and PG #12.

Section 70 of the *Act* states:

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.

Taking into consideration the tenant's comfort level interacting in person with the landlords, the history of conflict between the parties, the police involvement and the landlords breach of section 29 of the *Act*, I order, pursuant to section 70(1) of the *Act* that the landlord is not permitted to ask the tenant for entry at the time of entry unless an emergency exists and the entry is necessary to protect life or property.

In looking at the instances of unlawful entry, I find that the landlord's breach of section 29(1) of the *Act* is unlikely to re-occur. The landlord's first instance of unlawful entry, on April 14, 2021, appears to be an unfortunately mis-guided attempt to help. The tenant informed the landlords that she did not wish for this to occur again and the landlord responded "10.4" which is an acknowledgement of their understanding. As the landlord has not since that time placed the tenant's food order inside, I find it unlikely that it will happen again.

I find that this decision, in which the landlord's have been Ordered to comply with section 29 of the *Act* and PG #12 is, on a balance of probabilities, sufficient to ensure the landlord's compliance with section 29 of the *Act*. I note that the tenant has no evidence that the landlords have entered the subject rental property since May 11, 2021. I find that the landlord's illegal entry is not a chronic problem or one that is likely to re-occur. I therefore decline to allow the tenant to change the locks.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*. Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlords.

Conclusion

The landlords are Ordered to comply with section 29(1) of the *Act* and PG #12.

The tenant is permitted to deduct \$100.00 from rent.

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 24, 2021

Residential Tenancy Branch