Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIX LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: LRE LAT OLC FFT

Introduction

The tenants seek various orders under section 70 (restricting landlord entry), sections 31 and 70 (lock change authorization), and section 62 (landlord compliance) of the *Residential Tenancy Act* ("Act"). In addition, they seek to recover the cost of the application filing fee under section 72 of the Act.

Both parties, including three representatives of the landlord (hereafter the "landlord" for brevity), attended the hearing on February 3, 2022. The parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Service of Evidence

The tenants testified that they personally handed one of the landlords copies of the Notice of Dispute Resolution Proceeding and their documentary evidence. The evidence consisted of a copy of an inspection notice. The landlord confirmed receiving the Notice, but not a copy of any evidence. It is important to cite Rule 4.6 of the Residential Tenancy Branch's *Rules of Procedure* ("Rules"):

> The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

I am not satisfied that the respondent was served with any of the tenants' supporting evidence. While the tenant seems to recall giving their evidence to the landlord, in the absence of any additional, corroborating evidence proving her recollection, and in the face of the landlord's refutation of service, I cannot accept that the service of the tenant's evidence took place.

That said, the only documentary evidence submitted to the Residential Tenancy Branch consisted of a copy of an inspection notice, and a photograph of the female tenant. The photograph bears no relevance to these proceedings, and the parties did not dispute the fact that an inspection of the rental unit occurred on the date noted in the inspection report. In short, the inadmissibility of the tenants' documentary evidence does not have any significant impact on the outcome of their application.

The landlord representatives (hereafter simply the "landlord" for brevity) testified that they served a copy of their evidence on the tenants by way of registered mail on January 21, 2022. The tenants confirmed receipt of the landlord's evidence, but that they only received it on January 27, 2022. They argued that the landlord's evidence was not served within the required timeline set out in the Rules.

Rule 3.15 of the *Rules* states that "the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing." In this dispute, the tenants received the respondent landlord's evidence exactly seven days before the hearing. As such, the landlord served their evidence in compliance with the Act, and it is therefore admissible. It is noted that a copy of the inspection notice was included in the landlord's evidence.

Issue

Are the tenants entitled to an order under sections 31, 62, or 70 of the Act?

Background and Evidence

Relevant evidence, complying with the Rules, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

This application stems from one incident that occurred on September 20, 2021. On that date, the landlord, who had provided to the tenants a 24-hour written notice seven days before, to inspect the rental unit, entered the rental unit. The inspection was part of the new landlord's annual, routine inspection. By "new" landlord it is noted that the landlord took ownership of the 143-rental unit property in July 2021.

According to the tenants' application, this inspection and subsequent discovery of the safe led the tenants making this application for various orders. The written descriptions for these orders are as follows (reproduced as written by the tenants):

[For the application for an order for a lock change:]

Since the residential tendency act that allows reasonable entry to tenant unit was misused by violating my safety and security with listing my valuable items and finding my hidden safe box in the inspected closet without my permission, this has jeopardized my security and safety so I have zero trust toward the management who has spare of key to enter my home anytime without my permission even when I am not home.

[For the application for an order for landlord compliance:]

Line 6 of residential tendency act complies landlords to provide quiet enjoyment which was breached today by illegal inspection of my closets, behind my bedding, top of my shelves, and listing my items and filing them under my unit address which jeopardized my safety and security.

[For the application for an order restricting landlord entry:]

Landlord's management team have entered my unit with an excuse of general annual inspection. But they touched and listed my personal belongings (such as fridge, TV, safe box, etc) by entering my bedroom and opening my closets using flashlight without any permission.They violated my privacy and security. They were visiting neighbour units touching their items with bare hands and doing same in mine despite the fact we are in COVID pandemic. This puts my family and patients I see regularly at risk!

It is the tenants' position that the landlord, in conducting the seven-to-ten-minute-long inspection, conducted more of an "investigation" than an inspection. Personal items were observed and presumably touched, and the landlord would have observed a home safe. There are valuables in the safe, and the tenants felt that they now needed to remove the valuables from their home.

As a result of the tenants feeling like their personal effects were seen and touched during this inspection, they are no longer feeling safe and secure. One of the landlords removed a sheet that was covering some of the tenants' belongings. And the tenants had an issue with the landlord opening a closet door and inspecting what was inside. It was the tenants' belief that the landlord was making a list of the tenants' personal items. One of the landlords was calling out items and the other was writing them down on a checklist of sorts. The tenants did not give the landlord permission to do this.

The landlord opposes the relief sought in the tenants' application. It is the landlord's position that routine, annual inspections of the type that the tenants experienced are an important and necessary part of the landlord's obligation to ensure the safety of the rental units, and, of the property as a whole. Inspections may uncover all sorts of safety and health issues, such as insect infestations, water leaks, hoarding, drug use, and so forth.

The landlord remarked that the inspection might have been rather new to the tenants, as they have lived there for some time, but the landlord only took ownership last summer. It is part of the landlord's property management policy to perform annual inspections of all of its rental units.

As for the activity that is undertaken during an inspection, the inspecting employee is basically looking out for two things: (1) safety and health concerns, and deficiencies in the property that might need repairing; and (2) tenant-owned, but not landlord provided, appliances such as washing machines and dishwashers. The latter are noted during inspections because the mechanical failure of such non-landlord-provided appliances create a risk of substantial and expensive flooding.

The landlord emphasized that they do not record, or otherwise write down, a list of a tenant's personal belongings or property. They also explained that the landlord has the right under the legislation to inspect its property (for the reasons given), that the landlord has the right to issue a notice of inspection (which it did in this case), and that a landlord has the right to retain a copy of the keys for a rental unit should it be necessary to enter a rental unit either in an emergency or when proper notice is given.

The two landlord employees (the building, or resident managers) testified that they open and close closet doors to ensure that they are working. Oftentimes, they are not, but that it is usually a quick fix. They check windows, coverings, drapes, and so forth. The sheet that was removed, as the tenant noted, was because the employee's leg rubbed up against it while he was reaching up to inspect something. Neither employee recalled seeing any sort of safe or lockbox, and they do not otherwise care about such items.

In rebuttal, the tenants argued that there "should be a level of respect" and protocols in place when these inspections are done. They pointed out that anyone doing an inspection should be wearing gloves and be properly sanitizing. (The tenant A.J. is a healthcare worker who works with immunocompromised patients, and he is particularly concerned about COVID transmission.) The landlord acknowledged the tenants' concerns in this respect and will implement better COVID protocols going forward.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This entire application pertains to the landlord's inspection of the rental unit which occurred on September 20, 2021. An appropriate starting point is to consider the law as it pertains to inspections. The legal mechanism by which a landlord may conduct an inspection is by the application of section 29 of the Act. In its entirety, this section reads:

> (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).

In this dispute, a copy of the landlord's written notice was in evidence. Having reviewed the notice in its entirety, it is my finding that it complied with section 29(1)(b) of the Act. Moreover, the purpose of entering the rental unit as noted in the notice – "Annual In-Suite Inspection" – is, I must find, a purpose that is reasonable under the Act and the tenancy.

As for the nature of the inspection itself, and the manner in which it was conducted, I have carefully considered the evidence of the parties.

It is not lost on me that the tenants experienced a violation of their privacy. However, the encumbrance upon their privacy was brief (no more than ten minutes), and it was no more than what was necessary for the landlord to inspect the rental unit for the reasons explained by the landlord during the hearing. There is no evidence before me that the landlord in any way went into the tenants' personal belongings, went through their drawers, or did anything that would be considered wholly inappropriate or exceeding their right to inspect.

The landlord's evidence that the sheet covering an appliance came off through an accidental brush with his leg is consistent with him reaching up or leaning over to conduct a proper and thorough inspection. That the tenants keep a safe or lock box in their rental unit in the closet, and that the landlord was conducting a lawful inspection of the rental unit including that closet, does not give rise to a persuasive argument that their safety or security was in any compromised.

In short, I am not persuaded by the tenants' argument that their security or safety was in any way jeopardized by the landlord's lawful entry and subsequent inspection. Certainly, the tenants obviously felt uncomfortable with what were essentially strangers coming into their rental unit. Yet, the landlord has every legal right to conduct what is a reasonable entry into, and inspection of, the rental unit.

Given my findings above, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not persuaded me on a balance of probabilities that they are entitled to a lock change authorization order. Nor, I find, is the evidence such that they are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit under section 29 of the Act. Last, as there is no evidence before me that the landlord in any way breached the Act, the regulations, or the tenancy agreement, the tenants are not entitled to any order under section 65 of the Act requiring the landlord to comply with the Act.

As the tenants' application must be dismissed, without leave to reapply, they are not entitled to compensation for the cost of the application filing fee under section 72 of the Act.

Conclusion

The application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: February 3, 2022

Residential Tenancy Branch