



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT GROUP
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, LRE, OLC

Introduction

On September 15, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing. W.S. attended the hearing as an agent for the Landlord, with D.B. attending as the owner of the property, and S.L. attending as counsel for D.B. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance, with the exception of S.L., provided a solemn affirmation.

Service of documents was discussed, and there were no issues with service. As all parties confirmed that the documentary and digital evidence was received and viewable, I am satisfied that all evidence will be accepted and considered when rendering this Decision.

The Tenant was advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and

dismiss unrelated claims. As such, the Tenant was informed that he must choose the most pressing issue that required immediate attention, and the Tenant identified that restriction of the Landlord's right to enter was most significant issue. As such, this hearing primarily addressed submissions related to this issue, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to restrict the Landlord's access to the rental unit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 31, 2018, that rent was currently established \$1,100.00 per month, and that it was due on the first day of each month. A security deposit of \$550.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that the Landlord served a notice to enter the rental unit on August 12, 2022, by posting it to the door. He received this notice that day, and he confirmed that the date of entry was noted as August 17, 2022, between the hours of 1:00 PM to 4:30 PM, for the purpose of a "General Inspection". He stated that he had no issues with this notice.

He then testified that the Landlord served another notice to enter the rental unit on August 19, 2022, by posting it to the door. He received this notice that day as well, and he confirmed that the date of entry was noted as August 24, 2022, between the hours of

10:00 AM to 3:00 PM, for the purpose of “Maintenance might have to enter with a contractor to assess the walls in the basement”. He stated that he permitted entry, to a contractor, and as a result, this would not be considered an illegal entry. However, while the notice indicated that the reason for entry pertained to maintenance, it is his position that the Landlord did not conduct any maintenance during this entry. He referenced the Landlord’s own documentary evidence, and noted that there was a lack of a work order for this entry. He surmised that if the Landlord did conduct maintenance that day, then surely there would be an invoice to corroborate that amount.

Finally, the Tenant submitted that the Landlord served a third notice to enter the rental unit on September 14, 2022, by hand. He confirmed that the date of entry was noted as September 19, 2022, between the hours of 11:30 AM to 3:00 PM, for the purpose of “Home Inspector as per owner’s request”. However, it is his position that he was authorized to deny the Landlord entry into the rental unit on this notice as the Landlord had already conducted an inspection of the rental unit less than 30 days prior. He confirmed that he denied entry to the inspector on September 19, 2022, and that he then subsequently denied entry to an agent of the Landlord who appeared at the rental unit after the inspector was denied entry.

He stated that the agent of the Landlord called the police, and an officer then attended the scene to investigate the situation. He testified that he attempted to explain to the officer that it was his belief that the Landlord was not permitted to enter, and that if the Landlord did, it would be considered a “break and enter”. However, he submitted that the agent of the Landlord illegally entered the rental unit while he was having this discussion with the officer, shocking both him and the officer.

He acknowledged that the inspector did conduct a home inspection on September 19, 2022. However, he stated that the agent of the Landlord also took pictures of the rental unit at this time, rendering this entry as a “general inspection” in his mind, which in turn would have made this entry illegal. He referenced the evidence submitted, both documentary and digital, to support his position that the Landlord entered the rental unit illegally on September 19, 2022.

W.S. advised that notices for entry were served to the Tenant for each entry, and they complied with the *Act*. With respect to the September 14, 2022, notice to enter, where the Tenant claimed entry into the rental unit on September 19, 2022, would have been illegal, she testified that the purpose on this notice was for home inspection to be conducted, that a home inspector attended to conduct a home inspection that day, and

that this was clearly not a general inspection. She referenced an Inspection Report, that was submitted as documentary evidence, to support the position that a home inspection was completed on September 19, 2022.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 29 of the *Act* outlines the requirements should the Landlord need to enter the rental unit. More specifically, it states the following:

- (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).

When reviewing the consistent and undisputed evidence before me, I find it important to note that the August 12, 2022, notice for entry was for the purpose of a general inspection, that the August 17, 2022, notice for entry was for the purpose of maintenance, and that the September 14, 2022, notice for entry was for the purpose of a home inspector to conduct a home inspection. While the Tenant claimed that it was his belief that the Landlord was not permitted to enter the rental unit based on the third

notice for entry, clearly the purpose for entry on the third notice was different than the purpose for entry on any of the other notices, and there is no dispute that a home inspector attended the rental unit on September 19, 2022, and eventually conducted a home inspection.

Moreover, had the purpose on this third notice been for another general inspection, the *Act* permits the Landlord to conduct monthly inspections, and the timing between the entry on the first notice and the entry on the third notice was over 30 days. While the Tenant claimed that the second notice for entry was not for maintenance as indicated on the notice, he did not take issue with this entry at the time. Additionally, both the Tenant and the Landlord referred to an email dated September 21, 2022, where it appears as if maintenance was conducted in the rental unit during this entry. As such, I am not satisfied that he has sufficiently demonstrated that the Landlord conducted a general inspection on August 24, 2022.

In reviewing the totality of the evidence before me, it is evident that the Tenant read the *Act* and clearly misinterpreted what he had read. When viewing the videos that he submitted for consideration, it is apparent that the Tenant had already determined in his own mind that entry on the third notice would have been illegal, so he promptly denied the home inspector entry, and then subsequently denied entry to the agent of the Landlord, which then necessitated police attendance. However, as noted above, the reasons for entry on the notices were completely different, and even if this third notice was for a general inspection, more than 30 days would have elapsed in between general inspections in any event.

I find it important to note that the Tenant testified that there were issues in the rental unit that he was dissatisfied with, and that it was his belief that the Landlord was not addressing his concerns. As a result, he acknowledged that he was intentionally not cooperating with the Landlord in an effort to force the Landlord into a discussion over these concerns.

I find that this behaviour is consistent with his actions regarding denying entry into the rental unit, as it appeared as if he realized he had discovered a fault in the Landlord's notices for entry, which emboldened him to then intentionally attempt to deny the entry on September 19, 2022. I note that the Tenant testified that it was only when the agent of the Landlord started taking pictures after entering the rental unit, on September 19, 2022, that he determined that it was his belief that the entry then became for the purpose of a general inspection. However, if this were the case, the Tenant would have

had no valid reason to deny the entry into the rental unit initially, as the purpose on the notice for entry was for a home inspection. In my view, this contradiction is further evidence that supports a finding that the Tenant was, more likely than not, intentionally acting in a manner to spite the Landlord, and this causes me to question the credibility of the Tenant on the whole.

I also note that the Tenant claimed that the officer that attended on September 19, 2022, was equally as shocked as he was when the agent of the Landlord entered the rental unit. However, when I viewed the video, I observed no such reaction from the officer. I find that this claim was hyperbolic in nature, and that this further demonstrates the Tenant's mindset and approach in attempting to deal with the Landlord. It is clear that this tenancy has devolved into an unhealthy, antagonistic relationship. While it is possible that the Landlord could be liable in other aspects of this tenancy, in regard to the Tenant's claim of the Landlord's illegal entry, I am satisfied that the Landlord has complied with the *Act* by providing the proper written notices to enter the rental unit. It is evident that the Tenant was wholly responsible for the manner with which this situation unfolded, as it was borne out of his misunderstood reading of the *Act*, and his behaviours in response to this misinterpretation.

Conclusion

Based on the above, the Tenant's Application with respect to restricting the Landlord's right to enter the rental unit is dismissed in its entirety.

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: February 2, 2023

Residential Tenancy Branch