



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **LRE, LAT, OLC, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented by counsel, S.D. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant’s application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

The tenant named the landlord’s husband as a respondent to his application while the tenancy agreement indicates that there is a single landlord. As the landlord’s husband is not a party to the tenancy agreement, he has no rights or obligations under the *Act*, and I cannot make any orders against him. Consequently, his name was removed from the application and only the single landlord as named on the tenancy agreement appears on the cover page of this decision.

Partial Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings,

the settlement may be recorded in the form of a decision or an order. The parties agreed to the following term regarding the landlord's right to enter the rental unit:

The parties agree that the landlord will only enter the rental unit under the conditions as laid out under section 29 of the Act. For clarity, this section reads:

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).

Issue(s) to be Decided

Should the tenant be authorized to change the locks to the rental unit?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

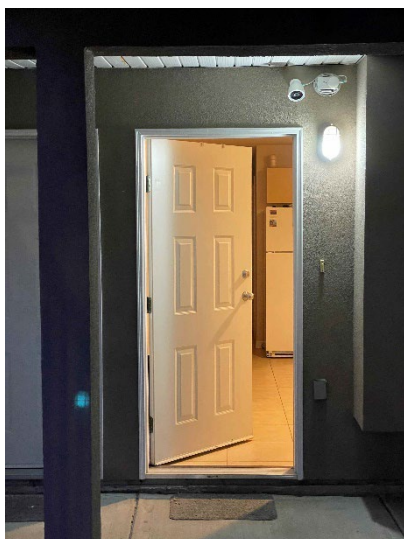
While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the tenant occupies one of two lower suites located below the landlord's house. The other suite was previously occupied by another tenant, "M", however that tenant's tenancy ended when the landlord served "M" with a 2 Month Notice to End Tenancy for Landlord's Use.

The tenant suspects that the landlord has entered his rental unit based on an email dated January 17, 2023 between himself and the landlord. In this email, the landlord states, *"M is the dirtiest tenant we have never ever cleaned her suite. [landlord's husband] went and cleaned her suite twice because he couldn't bear it. All she did was all day in the weekend and right after work sat on her bed and watched TV"*.

Based on this email, the tenant alleges that the landlord had entered "M"s suite without notice and without "M's" permission. The tenant theorizes that if the landlord's husband entered "M's" unit without authorization, he is likely to have done the same to his. The tenant also testified that 4 months after his own tenancy began, the security system in his unit was once disarmed after he thinks he armed it. He suspects the landlord may have done this but cannot provide anything to corroborate this testimony. The tenant seeks an order to change to codes to the security system and to change the locks to his unit.

The tenant testified that on January 14, 2023, his personal conversations were picked up by the video surveillance cameras installed by the landlord. Specifically, one camera installed directly above his front door has a 3-microphone array and the tenant wants the camera moved elsewhere.



Landlord's counsel submits that the camera does not record audio, or that if it did, the audio is not saved by the landlord. The conversation heard by the landlord on January 14, 2023 was overheard from the landlord's own upper deck while the tenant and "M" were conversing right below it. It was not heard through a microphone or camera.

The landlord's husband only entered "M"'s unit after it was vacant, after the tenancy ended. There is no admission in the email that either the landlord or her husband ever entered "M"'s unit without authorization; it's a stretch for the tenant to come to this conclusion from this sentence in the email. Counsel argues that there is zero evidence of unlawful access to either the tenant's or "M's" units.

Analysis

Pursuant to section 31(3) of the Act, a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Changing locks is the subject of Residential Tenancy Policy Guideline 7 [locks and access]. The guideline states:

Where a tenant can prove that the landlord has entered contrary to the *Residential Tenancy Act*, the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants. An order for change of locks will only apply to areas where the tenant has exclusive possession.

I have insufficient evidence to satisfy me the landlord ever entered into the tenant's unit contrary to the Act. I am in agreement with counsel's assertion that the tenant has "read into" the January 17th email and that the tenant came to the conclusion that the landlord's husband entered "M's" unit without authorization. The tenant had the opportunity to corroborate his suspicion by calling "M" as a witness or providing a written statement from "M" stating that she did not authorize the landlord's husband to enter the unit. Without corroborating evidence from the tenant, I cannot conclude that the unauthorized entry into "M's" unit ever happened.

Even if the tenant were to establish that the landlord or her husband entered "M's" unit without authorization, it doesn't necessarily mean they entered the tenant's unit as well. As the guideline points out, the tenant must prove the landlord has entered the rental unit contrary to the Act before I can consider the tenant's application to change the lock. I am not satisfied the tenant has provided sufficient evidence of the landlord doing so.

Likewise, I am not satisfied the landlord disarmed the tenant's security system as the tenant claims. On a balance of probabilities, I find it more likely that the tenant simply forgot to arm it before leaving on a single occasion. The tenant's application seeking to change the locks and change the code to the alarm system is dismissed without leave to reapply.

I have reviewed the photos of the security camera installed above the tenant's door, as well as the description of the type of camera supplied by the tenant in his evidence. I find that the camera is capable of capturing both audio and video of people outside the tenant's front door. The collection of the personal information of the tenant and his guests is an unreasonable breach of the tenant's right to quiet enjoyment of the property under section 28(a) of the Act which guarantees the tenant's right to reasonable privacy. Consequently, I order that this camera be moved to a location where the tenant's conversations cannot be picked up by the camera's microphones. The tenant must consent to the location of the camera if the video captures the front entryway of the tenant's rental unit.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, the tenant may reduce a single payment of rent due to the landlord by \$100.00.

Conclusion

The landlord may enter the rental unit in accordance with section 29 of the Act. The landlord must move the camera located above the tenant's front entrance to a location agreeable to the tenant.

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: May 25, 2023

Residential Tenancy Branch