



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **LRE, LAT, RPP**

Introduction

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

1. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
2. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act; and,
3. An Order for the Landlord to return the Tenant's personal property pursuant to Sections 65 and 67 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant confirmed that he personally served the Landlord's wife with the Notice of Dispute Resolution Proceeding package for this hearing on March 24, 2023 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that the Landlord was served with the NoDRP package on March 24, 2023, in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?
2. Is the Tenant entitled to an Order for authorization to change the locks to the rental unit?
3. Is the Tenant entitled to an Order for the Landlord to return the Tenant's personal property?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this oral periodic tenancy began on December 20, 2022. Monthly rent is \$1,000.00 payable on the first day of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant personally served his evidence on March 29, 2023 to the Landlord.

The Tenant had explained to the Landlord that he has a stress disorder and a memory problem. Two days later the Tenant testified that the Landlord came to his door when he was drinking, and the Landlord ripped a security camera off the bottom of the Tenant's door. The Tenant placed it there so he can see who is coming to his door, or who is knocking. The Tenant said the Landlord was pounding on his door and trying to use the handle to enter his rental unit. Later in the evening, someone came to the Tenant's door in a mask with scissors and took the security camera.

The Tenant said he told the Landlord that he made a police report about the theft that occurred on March 12, 2023.

The Tenant also claimed that a hummingbird feeder has gone missing from his rental unit.

The Tenant has an inside door to his rental unit, but this goes to the Landlord's home. The Tenant said he had a stick under the handle, and he noticed the stick was knocked

off to the side. The Tenant believes that the Landlord has entered his rental unit from this inside door.

The Tenant changed the key for his rental unit, and he did not want to give the Landlord a copy because the Landlord had tried to come into the Tenant's front door when the Landlord was drinking. But it seems like the Landlord is coming in through the inside door.

The Tenant wants his old security camera returned. He said he talked to the Landlord about his security camera, but the Landlord told him he does not have it.

The Landlord said the Tenant told him that someone stole his camera. The Landlord told him that he can come and check his security cameras to see if he can see who did it. No one came and checked the Landlord's cameras.

The Landlord said he does not have the Tenant's camera. He did say he has the Tenant's hummingbird feeder. The Landlord agreed to return the bird feeder to the Tenant.

The Landlord said he is not accessing the Tenant's rental unit. He said the inside door locks from the Landlord's side, and it is always locked. On the other side of the door is the laundry room, and that service is not part of the Tenant's use.

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.

Settled claim:

The Landlord agreed to return the hummingbird feeder to the Tenant's front door, and I hope that that has been done now.

RTB Rules of Procedure 3.10.1 and 3.10.4 state:

3.10.1 Description and labelling of digital evidence: *To ensure a fair, efficient and effective process, where a party submits digital evidence,*

identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent [party].

A party submitting digital evidence must:

- *include with the digital evidence:*
 - *a description of the evidence;*
 - *identification of photographs, such as a logical number system and*
 - *description;*
 - *a description of the contents of each digital file;*
 - *a time code for the key point in each audio or video recording; and*
 - *a statement as to the significance of each digital file;*
- *submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and*
- *serve the digital evidence on each respondent [party] in accordance with 3.10.4. (emphasis mine)*

3.10.4 Digital evidence served to other parties: *Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form #RTB-43).*

The Tenant has neither provided a completed form #RTB-43, nor the key time points in the video that he uploaded into his evidence were provided. This is a requirement for digital evidence. I decline to view this piece of digital evidence because of the lack of clarity of what they show and specifically the timepoints that are key. I took the Tenant's verbal evidence and description of what was on the video and consider it in my analysis below.

The Tenant wants the return of his security camera which he had placed at his front door. He said he made a police file for the theft. The Landlord said he did not take the Tenant's camera; however, the Tenant gave evidence that there were other people at his front door, as well as a masked person. The Tenant has not proven on a balance of probabilities that the Landlord took his camera, and I do not make any order that the Landlord must return this piece of personal property.

Section 31 of the Act prohibits landlords and tenants from changing locks to the rental unit without permission of the other party and/or providing new keys to the other party. A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry,
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- 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,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

I decline to make an Order to suspend or set conditions on the Landlord's right to enter the rental unit; however, I remind the Landlord of the Tenant's Section 28 rights which state:

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.*

The Tenant testified that the Landlord has been at his front door under the influence of alcohol. The Tenant argued that the Landlord has tried to open the door by using the handle, but the Landlord did not get into the rental unit as the Tenant had changed the locks. I find that the Tenant's changing the locks does not affect any other tenants as

the outside door is the access only for the Tenant's rental unit. As the Tenant is entitled to exclusive possession of his rental unit, the Tenant is permitted to keep the locks changed to ensure the Landlord does not try to enter his home without the Tenant's permission.

I am mindful that the Tenant also has an inside door which gains access to the Landlord's home. The Landlord stated at the hearing that that door always remains locked. The Tenant has braced the door with a stick under the handle and he did come home one day, and the stick had been displaced suggesting that someone had gained access to his rental unit.

It does not provide peace of mind that this door can only lock from one side. I Order the Landlord to install a locking passage set no later than May 22, 2023. This will ensure the Tenant can have quiet enjoyment of his rental unit of which he is entitled. Should the Landlord fail to comply with the above Order, the Tenant is at liberty to apply for a rent reduction for failing to provide this locking passage set for the Tenant's security.

Conclusion

I dismiss the Tenant's claim for the return of his personal property with leave to re-apply if new information comes forward.

I dismiss the Tenant's claim for an Order to suspend or set conditions on the Landlord's right to enter the rental unit with leave to re-apply if new information comes forward.

I order the Landlord to install a locking passage set on the inside door in the rental unit no later than May 22, 2023.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 08, 2023

Residential Tenancy Branch