



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes LRE, OLC

Introduction

On April 21, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to set restrictions on the Landlord's right to enter pursuant to Section 70 of the *Residential Tenancy Act* (the "Act") and seeking an Order to comply pursuant to Section 62 of the Act.

Tenants D.K. and A.G. attended the hearing. L.S. and K.L. attended the hearing as agents for the Landlord. L.S. advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended accordingly.

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 provided a solemn affirmation.

Service of Tenants' Notice of Hearing package was discussed, and there were no issues concerning service. As such, I am satisfied that the Landlord was duly served this package.

Tenant A.G. confirmed that their documentary evidence was not served to the Landlord. As such, I have excluded this evidence and will not consider it when rendering this Decision.

L.S. advised that the Landlord's evidence was served to the Tenants by registered mail on July 25, 2023, and A.G. stated that they did not receive this evidence. As this evidence was served by mail, Section 90 of the Act indicates that this would be deemed to have been received five days later. As such, this evidence was served late, and not in

accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure. Consequently, I have excluded this evidence and will not consider it when rendering this Decision.

A.G. advised that the parties had resolved their claim for an Order to comply. As such, the only issue that will be addressed in this Decision pertains to the Tenants' request to restrict the Landlord's access to the rental unit.

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

- Are the Tenants 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 September 1, 2017, that the rent was currently established at \$1,130.00 per month, and that it was due on the first day of each month. A security deposit of \$512.50 and a pet damage deposit of \$546.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

A.G. advised that the Landlord had entered the rental unit three times in less than 30 days. Given that there was no documentary evidence, he testified that the Landlord served a notice of entry on March 9, 2023, to enter on March 20, 2023, between 9 AM and 6 PM for the purpose of an inspection. As well, he stated that the Landlord specified that the purpose of the inspection was to ensure cleanliness after a breach letter was served. He acknowledged that they were served a breach letter in the past for a cleanliness issue, but he was unsure when this was.

He then submitted that the Landlord served a second notice of entry on March 29, 2023, to enter between April 3 to 6, 2023, between 7 AM and 8 PM for the purpose of taking necessary steps to control pests. As well, he stated that the Landlord specified that the purpose of this entry was to seal cracks and holes to prevent a cockroach infestation.

Next, he advised that the Landlord served a third notice of entry on April 15, 2023, to enter between April 18 to 19, 2023, between 8 AM and 6 PM on the 18th, and no specific time on the 19th, for the purpose of taking necessary steps to control pests. As well, he stated that the Landlord specified that the purpose of this entry was for a monthly pest inspection.

Finally, he testified that they received a breach letter from the Landlord dated April 20, 2023, which indicated that the Landlord would be inspecting the rental unit on April 27, 2023, but there was no time indicated. He stated that they informed the Landlord that they were not feeling well, and that they then agreed to permit the Landlord to enter on May 1, 2023, for this matter.

He advised that since this May 2023 inspection, the Landlord has been better about entering the rental unit, but he indicated that the Landlord then did not give proper written notice to enter in June 2023. However, he did not know any details on this notice to make submissions that would support their claims that the Landlord had not given the proper written notice to enter the rental unit.

L.S. advised that there was a large outbreak of cockroaches in the building that affected almost half of the units in August 2022, and that the Landlord has tried their best to resolve this by sealing units. However, it has been an ongoing battle. She testified that the Landlord is posting notices to enter the rental unit, and also conducting monthly inspections with the pest control company to resolve this issue. She stated that warning or breach letters would be issued to resident who did not keep their units in a reasonable state of cleanliness.

She submitted that as the Landlord is slowly addressing the infestation, only affected units and surrounding units will be subject to inspections. She confirmed that A.G.'s testimony of the details on the notices is correct. She referenced the March 29, 2023, notice of entry and acknowledged that the entry dates of April 3 to 6, 2023, were vague; however, she stated that they worked with the Tenants and the Tenants agreed to a specific time and date for this entry.

Regarding the April 15, 2023, notice of entry for April 18 and 19, 2023, she confirmed the time, and lack of time, noted on this notice. As well, K.L. acknowledged that she did not establish a specific time of entry with the Tenants on this notice.

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 28 of the *Act* states that the Tenants are entitled to quiet enjoyment including: reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* outlines the requirements should the Landlord need to enter the rental unit. More specifically, it 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.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b)."

When reviewing the consistent evidence before me, based solely on the testimony of the parties, it appears as if the Landlord is serving the Tenants with written notice to enter the rental unit. However, I find it unreasonable for the Landlord to post the time of entry between a large block of the day spanning 12 hours, for example. Furthermore, I also find it unreasonable for the Landlord to post on the notice that the date of entry could possibly be within a period of a few days. Should the Landlord wish to enter the rental unit in future, the Landlord is cautioned that they need to indicate the specific date of entry, and have a more reasonable estimate of the time of entry.

In regard to the Tenants' claims of an unreasonable purpose or an unreasonable number of times the Landlord has entered the rental unit, I find it important to note that neither party submitted copies of these notices for consideration. However, the consistent evidence is that the Landlord did note a reason for each entry. Furthermore, it is unclear when the Landlord entered the rental unit on which notice as it also appears that the Tenants permitted the Landlord to enter of their own volition on a few occasions. As it is evident that the Tenants do not even know which notices they have an issue with, I dismiss this claim without leave to reapply. The parties should consult

the *Act* and Policy Guideline # 7 to understand their rights and responsibilities with respect to entry to the rental unit, and then conduct themselves accordingly.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

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: August 8, 2023

Residential Tenancy Branch