



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LAT, FF

Introduction

This hearing was convened in response to an application by the tenants seeking an Order that the landlords comply with the Act, and Order allowing the tenants to change the locks on the rental unit and recovery of the filing fee paid for this application.

Both parties attended the hearing and gave evidence under oath.

Issue(s) to be Decided

Have the tenants met the burden of proving that it is necessary to order the landlords to comply with the Act? Have the tenants shown sufficient cause that they should be allowed to change the locks on the rental unit? Should the tenants recover the filing fee paid for this application?

Background and Evidence

This tenancy began on September 1, 2009. In their details of dispute the tenants say the landlords entered their property illegally on May 31, 2012 at 9:15 a.m. The tenants say the landlords are not providing proper notice as required by the Act and they wish to change the locks because the landlord entered the rental unit without having provided proper notice of their intention to do so.

The landlords testified that they have entered the property twice, once in January to perform an inspection for insurance purposes and a second time to perform a refinancing appraisal. The landlords submit that both times they provided proper notice of their intention to enter the premises by posting it to the rental unit door.

The tenants argued that the Act states that a document posted on the door is not served until the 3rd day after it was posted. Meaning, in effect, that if a landlord wishes to post a 24 hour notice to enter a rental unit then the landlord must post the notice 3 days prior to the 24 hour period in short 4 days prior to entry.

Analysis and Findings

With respect to the landlord's right to enter the rental unit for such tasks as to perform an inspection or appraisal the landlord must obtain the tenant's permission at the time of entry (or not more than 30 days before entry) or the landlord must give notice:

(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;

The tenant argues that if the landlords post a notice to the door that notice is not considered received by the tenants until the 3rd day after it was posted. The tenants refer to Section 90 of the Act.

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

However, these are deemed dates of service. In fact, a document is served the day it is received. If a party does not respond to a notice or disputes the date he or she received a document then the deemed served provisions as set out in Section 90 are applied. In this case there has been no suggestion or evidence submitted to show that the tenants failed to see the notice on the day it was delivered, they only argue that they were not considered to have received it until the 3rd day after it was delivered. While I have found that the tenants have not supplied sufficient evidence to show that they did not receive the notice on the day it was posted, I note that in cases where the relationship between the landlords and the tenants is not cordial and cooperative a landlord is best advised to deliver notices of inspection to tenants in person. In any event, I decline to Order the landlords to comply with the Act as I find there has been insufficient evidence presented to show that they are not complying with the Act.

With respect to the tenants request to change the locks on the rental unit and restrict the landlords' right of entry, I find that the tenants have failed to supply sufficient evidence in this regard and this application is dismissed.

As the tenants have been unsuccessful in their applications I decline to award them recovery of the filing fee paid for this application.

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: June 27, 2012.

Residential Tenancy Branch