

DECISION

Dispute Codes OLC PSF RPP RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to order the landlord to comply with the Act, provide services or facilities required by law, return the tenant's personal property, allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and for the tenant to recover the filing fee.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. The mail receipt was provided in the documentary evidence. The landlord was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to have the landlord to comply with the *Residential Tenancy Act*, to order the landlord to provide services or facilities required by law and for the landlord to return the tenant's personal property.

- Whether the tenant is entitled to a Monetary Order under section 67, in the form of reduced rent for repairs, services or facilities agreed upon but not provided.

Background and Evidence

This is a month to month tenancy which began on September 1, 2002 with rent payable on the first of each month in the amount of \$389.00.

The landlord is a not for profit private charity in the business of providing subsidized rental housing. The building has 47 rental units and is designated for residents over the age of 55.

The tenant testified that there have been changes in the building and problems which began around December of 2008. She stated that for six or seven years the tenants of the building have been allowed to have flowers and plants in the common areas, to hang wreaths on their doors, to have small items placed on the shelves located outside of their rental unit doors, to store items in the garbage room and the tenant's workshop room.

The tenant advised that during the winter months the landlord did not provide snow removal, and so an elderly tenant started shovelling and subsequently passed away. The news media heard about this situation and attended the building to obtain information from the tenants. After this event the tenant stated that the property management started issuing memos advising tenants to remove their personal items from the tenant's room, hallways and common areas. The tenant testified that when tenants asked the building caretaker what was going on with all of the changes, the building caretaker told the tenant and other tenants that they were being punished for speaking to the news media about the tenant who passed away from shovelling snow.

The tenant entered into evidence, a chronological account of the dates the landlord removed her possessions from the hallways, common areas, and the date that the landlord changed the lock on the tenant's workshop room with her scooter and walker inside.

The tenant advised that following is a list of her possessions which the landlord currently has removed and stored in the tenant's workshop room:

- 3 pots housing a combination of real and fake flowers from the 4th floor
- 5 fake plants from the 1st floor
- Red Heart wreath from the tenants door
- 5 Teddy Bears from the ledge outside the tenant's door
- A wicker plant stand
- Scooter in Workshop
- Walker in Workshop

The tenant testified that the building was remediated a few years ago after which the tenant's were issued a notice informing them that they could house only two plants on their decks and light furniture. The tenant stated that she did not comply with that notice back then and was subsequently issued a 1 Month Notice to End Tenancy in 2007. The tenant stated that she was later told to rip up the notice, but she didn't and submitted a copy into evidence.

The tenant stated that the current resident building manager used to be nice and respectful, but since having to enforce these new rules the resident building manager has been disrespectful. The tenant is requesting that the landlord be ordered to use some flexibility with enforcing their rules about the use of the Tenant's workshop room and the availability of housing plants throughout the building and on tenant's decks.

The tenant testified that on several occasions, in writing, via telephone and during her testimony at this hearing, the tenant requested to have a meeting with the property manager to discuss the required changes.

The tenant testified that there was no heat in the fourth floor hallway during the winter but that she did not inform the landlord of this problem.

The tenant is concerned that what she was told by the building caretaker is true and that the residents of this building are being punished. The tenant testified that she, along with other tenants, are now feeling harassed and are living in fear of what to expect next.

The tenant's witness testified that she has been a resident for 8 years and that she has always been allowed plants in the lobby, articles outside her apartment door, and use of the tenant's workshop room and garbage room. She stated that the previous property manager tried to enforce only two plants on decks back when the building was remediated however they only sent one notice around and then stopped pursuing the issue.

The witness advised that these plants were well cared for, that the tenant's are all responsible adults who live to see these plants grow, that they ensure all of the plants are placed on proper drip trays so there couldn't be problems with dirt getting in to the gutters, and that she too feels that the landlord is punishing them.

The landlord testified that she has been in charge of this building since December 2008 and has been faced with implementing changes to the building to comply with fire regulations. The landlord stated that when she walked through the building she noticed several violations with plants located in hallways and the common areas that could pose a fire hazard and problems to the firemen who could trip or get the hoses caught on the plants or articles hanging from doors or stored on the shelves by the doorways. The landlord testified that memos were issued to all of the tenants advising them that they had two weeks to remove plants from their deck (except for the two 12" plants allowed), to remove all plants and personal articles from hallways and common areas.

The tenant testified that although there were plants at the end of hallways, the plants that were in the common areas were not blocking any aisles and in fact they were up against the windows and questioned how these could be a fire hazard.

The landlord testified that they are in the process of purchasing plants to be placed in the common area that these plants will be cared for by the landlord and this way they would not be giving preference to any tenant's plants over another tenant.

The landlord advised that the building had rain screening done in 2004 and that the tenants were advised that they could only keep two plants on drip trays, on their decks to prevent the occurrence of dirt from getting into the drainage system.

When asked why she did not respond to any of the tenant's written requests, the landlord testified that she has been too busy and that she needed her supervisor's permission before she could attend a meeting with the residents. The landlord testified that had the tenant requested additional time to relocate her items, the landlord would have considered the request.

The landlord's supervisor stated that they do not normally allow property managers to meet with tenants to discuss changes as they are too busy working on getting other rental facilities up and running and do not have time to meet with tenants to discuss problems or changes. The supervisor stated that it is not their company's normal practice to restrict tenant's access to common areas or lock tenant's possessions behind closed doors.

Analysis

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced.

In regards to an Applicant's right to claim damages from the Respondent, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under sections 33 and 67 of the *Act*, the Applicant tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord.

I find that the landlord has failed to prove that the presence of wreaths on doors, small articles placed on a ledge at the tenant's door, and the placement of the plants in the common areas constitute a fire hazard.

Landlords have the right to restrict or remove a service or facility however they must do so in a manner that is stipulated in the *Residential Tenancy Act*. I find that the landlord has contravened section 27(2) of the *Residential Tenancy Act* which stipulates that when a landlord terminates or restricts a service or facility that they must give 30 days written notice and that they must reduce the rent in an amount that is equivalent to the reduction value. In this situation the landlord only issued 14 days written notice and failed to reduce the rent in an amount that is equivalent to the reduction value.

The property manager chose to ignore the requests of the tenant for a meeting and more time to resolve the situation. The landlord contradicted herself by stating that had the tenant requested more time they would have considered it. The property manager also contradicted herself by stating plants could not be in the common areas, as they pose a fire hazard, yet the property manager is purchasing plants to be placed in the same common area.

I find that by changing the lock on the tenant's workshop, thus restricting tenant's access, the landlord has violated the tenancy agreement section 16 which states "Neither the tenant nor the landlord will change or add a lock or security device (like a door chain) to the premises unless both agree, or unless ordered by an arbitrator.

I find the manner in which this property management company chooses to deal with their tenants to be deplorable and disrespectful. The property managers stated that they are too busy to meet with tenants to resolve issues and instead have locks changed on doors and remove tenant's personal items to cause the tenants distress and panic. I find after hearing the verbal testimony and reviewing the documentary evidence, that these landlords are acting in a manner for which a reasonable person would know would put their tenants in a state of fear.

I find that the tenant has proven that there has been an implied service or facility agreement allowing tenants to have unrestricted use of the tenant's workshop room, to

place and care for plants in the common areas, at the end of hallways, on their patios, to hang wreaths on their doors, and place small articles on a ledge by their doors, for a period covering over eight years.

Based on the foregoing, I find in favor of the tenant's request for a rent reduction in relation to the restriction of services or facilities previously agreed upon but no longer provided as follows:

- 1) \$125.00 rent reduction per month, or part there of if restored, for not being allowed access to the tenant's workshop room and to store her scooter and walker in the tenant's workshop room
- 2) \$25.00 rent reduction per month, or part there of if restored, for not being allowed to hang a wreath on her door and to have ornaments placed on the ledge and wall by her door
- 3) \$20.00 rent reduction per month, or part there of if restored, for not being allowed to place and care for plants in the common area
- 4) \$10.00 rent reduction per month, or part there of if restored, for the loss of use of the old garbage room
- 5) If the landlord enforces the restriction of 2 plants on the tenant's deck, then the tenant will be allowed a \$20.00 rent reduction per month, or part there of if restored

This rent reduction is retro active to the dates which the landlord instituted the changes and continues for the remainder of the tenancy. The landlord is at liberty to provide the services or facilities to the tenant again, to eliminate the rent reduction, if they so choose.

Based on the testimony with regards to the new garbage bins that the landlords have provided for the tenant's use, I find that issues do exist with tenants not being able to use the garbage bins given the size and structure of the new bins. As the landlords testified that they cannot make the time to meet with tenants to resolve such issues, I

find this issue before me. I HEREBY ORDER the landlord to provide waste removal bins that seniors are able to use independently within 5 days of receiving this decision, either by using smaller toter bins, or by having the waste removal company provide a large dumpster that has side access doors or panels which enable senior adults to put their waste inside without having to open the large lids and access the garbage bin from the top.

As the tenant is primarily successful in her application, I find she is entitled to recover the filing fee for this application.

Conclusion

I hereby order the landlord to return the tenant's personal possessions immediately. With respect to the plants, if they did not survive being moved, then the landlord will need to provide the tenant with plants of similar nature and size within two days.

I find that the tenant is entitled to a Monetary Claim including the filing fee for this proceeding as follows:

Retro-active rent abatement as follows:	
Loss of personal items (wreath and ledge) at tenant's door from February 16, 2009 = 2 ½ months x \$25.00	\$62.50
Loss of plants from common areas and hallways from February 16, 2009 = 2 ½ months x \$20.00	50.00
March 18, 2009 the lock was changed on the tenant's workshop room restricting access to stored items 1 ½ months x \$125.00	187.50
Loss of old garbage room usage – from mid March and April = 1 ½ months x 10	15.00
Filing fee	50.00
Monetary Claim in favor of the tenant	\$365.00

I hereby grant a Monetary Claim in favor of the tenant in the amount of \$365.00 pursuant to sections 27(2) and 67 of the *Act*. **I hereby order** the tenant to deduct the \$365.00 from her May 2009 rent.

If the landlord chooses not to reinstate any or all of the 5 items for which I have granted a rent reduction above, **the tenant is hereby ordered** to reduce all future rent, beginning May 1, 2009, for any services not returned to her, by the amounts stipulated above.

I HEREBY ORDER the landlord to provide waste removal bins that seniors are able to use independently within 5 days of receiving this decision

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: April 20, 2009.

Dispute Resolution Officer