



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OLC, RP

Introduction

This hearing dealt with the tenant's application for an order requiring the landlord to comply with the Act and to make repairs to the unit, site or property. The tenant and the tenant's agent participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be Decided

- Whether the tenant is entitled to orders, as above

Background and Evidence

There was no evidence of a written residential tenancy agreement for this month-to-month tenancy which began on or around November 15, 2003. Rent in the amount of \$501.00 is payable each month, and a security deposit of \$200.00 was collected at the start of tenancy.

The tenant states that a wheelchair ramp was in place at the rental facility at the start of her tenancy. However, she asserts that without any notice or explanation from the landlord the wheelchair ramp was removed in January 2009. Subsequently, one has not been rebuilt. The tenant states that she is disabled and in the absence of a wheelchair ramp her ability to come and go from her residence by way of her motorized scooter is precluded.

Analysis

As for service of documents, section 89 of the Act addresses **Special rules for certain documents** and provides, in part:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 or Part 5, when required to be given to one party by another, must be given in one of the following ways:

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Section 90 of the Act addresses **When documents are considered to have been received**. Specifically, section 90(a) states:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

According to the Canada Post online tracking system, two notification cards were left for the landlord on April 20, 2009, however, the landlord did not pick up the hearing package from the postal outlet. Notwithstanding, I find that the landlord was served pursuant to the requirements set out in section 89 of the Act, as above.

Section 27 of the Act speaks to **Termination or restricting services or facilities** and provides, in part, as follows:

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

Based on the undisputed testimony of the tenant and her agent, I find that the wheelchair ramp is essential to the tenant's use of the rental unit as living accommodation. Pursuant to the statutory requirements set out in section 27 of the Act, as above, the landlord may not terminate wheelchair access to the rental unit.

Section 62 of the Act addresses **Director's authority respecting dispute resolution proceedings** and provides, in part:

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Conclusion

Pursuant to all of the above information, I hereby order the landlord to FORTHWITH provide wheelchair access to the subject facility.

DATE: May 27, 2009

Dispute Resolution Officer