



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, LAT, LRE, MNDC, OLC, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders to cancel a 10 day Notice to End Tenancy, for monetary compensation under the Act or tenancy agreement, for the Landlords to comply with the Act, to suspend or set conditions on the Landlords' right to enter the rental unit, to authorize the Tenant to change locks, to allow the Tenant to reduce rent for loss of services or facilities agreed upon but not provided and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that at the outset of the hearing, the Agent for the Landlords explained the Tenant had paid the rent under the 10 day Notice to End Tenancy, and the Notice had been cancelled. Therefore, that issue did not have to be dealt with during the hearing. The Agent for the Landlord further explained that the Tenant had only named the Landlord's brother in the claim and provided the name of the owner of the property, who is the actual Landlord. Therefore, I have amended the style of cause accordingly.

I further note that the Agent for the Landlord explained she had been retained to deal primarily with the rent issue, and she had been given little or no instructions regarding the other issues in the Application of the Tenant. The Agent for the Landlord said several times she was expecting the Landlord to appear at the hearing to reply to the Tenant's other claims in the Application. The Landlord did not appear.

Issues(s) to be Decided

Is the Tenant entitled to the relief sought?

Background and Evidence

The Tenant, his witness and the Landlord first viewed the rental unit property in early January of 2010. The rental unit is a residential house with a yard. The Tenant moved into the property and the tenancy began on February 1, 2010. The monthly rent is \$2,000.00.

The Tenant testified that when the Landlord showed him the rental unit property the Landlord told the Tenant that the Tenant would have full use of the garage. The Landlord promised to give the Tenant keys to the garage when he moved in. The Tenant also testified that the Landlord told him that the Tenant could use the garden in the back to grow his own vegetables.

In evidence the Tenant submitted a letter from his witness, who writes that he saw and heard the Landlord promise the Tenant that the garage was included in the rent.

At the time the Tenant was moving in, the Landlord told him he could not use the garage and to store his excess property on the balcony of the rental unit. The Landlord has also taken over the garden and is not allowing the Tenant to grow his own vegetables.

When the Tenant complained to the Landlord about these problems, the Tenant alleges the Landlord said, "... so take me to court", or words to that effect.

The Tenant further testified that the Landlord is coming to the rental unit every day to work on the garden or collect mail. The Landlord often comes to the rental unit three or four times a day according to the Tenant.

The Tenant also testified that the Landlord is storing a fridge and dryer in the laundry room, which he promised to remove when the Tenant moved in.

The Tenant further testified that he received a warning letter from Canada Post that they would not deliver mail to the upstairs mailbox at the rental unit because the stairs are unsafe. The mailbox has been moved down to the bottom of the stairs in order to allow delivery for the time being. The Landlord also removes all the mail from the mailbox, takes it home, then returns the mail of the Tenant to him.

The Agent for the Landlord was unable to reply to these claims, as the Landlord had not given her the information she required to dispute these allegations. The Agent for the Landlord testified that the parties had a standard term rental agreement, that it was a large three story detached house, and that she had not seen any notice from Canada Post.

Analysis

Based on the above, the uncontradicted testimony and evidence, and on a balance of probabilities, I find that the Landlord has breached several sections of the Act and tenancy agreement.

I find that the Landlord has failed to provide the garage and garden, which are facilities agreed to at the start of the tenancy, and which were to be included in the rent. To remove or terminate these facilities from the Tenant's use without notice or compensation is a breach of section 27 of the Act. I find that the Tenant has experience a loss due to the Landlord's breach.

Therefore, I order the Landlord to reduce the rent for loss of these facilities in the amount of \$300.00 per month starting July 1, 2010, and continuing at this reduction until the Landlord has restored full use of the garage and garden to the Tenant.

I find the Tenant has established this loss since the beginning of the tenancy in February of 2010. Therefore, I order the Landlord to pay to the Tenant the sum of **\$1,500.00**, for loss of use of the garage and garden for the five months from February until the end of June of 2010.

I also find that the Landlord, or his Agents', removal of the Tenant's mail and constant visits to the rental unit have caused the Tenant to experience a loss of quiet enjoyment of the property, which is a breach of section 28 of the Act. I order the Landlord to pay to the Tenant the sum of **\$500.00**, for loss of quiet enjoyment of the rental unit and property for the five months from February until the end of June of 2010.

Combining the above two awards along with the \$50.00 filing fee paid for the Application, I order that the Tenant may deduct the sum of **\$2,050.00**, from future rent payments.

The Landlord and his Agent must abide by section 29 of the Act. This means the Landlord or his Agents may not enter the rental unit or go onto the property, except by giving the Tenant the required 24 hour, written Notice, with an explanation as to why the entry is required, as described in section 29 of the Act.

I order that the Landlord or his Agents must not remove any mail from the Tenant's mailbox. The Landlord and his Agents must put in the appropriate change of address notice with Canada Post and have all mail addressed to the Landlord or his Agents directed to them at their respective addresses. The Landlord is not to interfere with the Tenant's mail in any way.

I order the Landlord to repair the stairs at the rental unit to the appropriate municipal code.

The rent reduction of \$300.00 will continue on a monthly basis until the Landlord has made all the above ordered repairs and ceased breaching the Act, and until the Landlord has filed his own Application for Dispute Resolution with the branch, paid the filing fee, and provided sufficient evidence to show he has complied with the terms of these orders and receives an order from a Dispute Resolution Officer allowing the rent to return to its usual rate. I have also enclosed a copy of a guidebook to the Act for the Landlord's reference.

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 14, 2010.

Dispute Resolution Officer