

DECISION

Dispute Codes OLC, PSF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement and for an order that the landlord provide services or facilities required by law.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord provide services or facilities required by law?

Background and Evidence

This month-to-month tenancy began on May 1, 2002 and the tenant still resides in the unit. Rent in the amount of \$605.94 is payable in advance on the 1st day of each month, and the tenant pays the landlord an additional \$107.60 for hydro and satellite TV. There are no rental arrears. The previous landlord collected a security deposit in the amount of \$263.00 on May 1, 2002, and the home sold on July 1, 2003.

The tenant testified that she was given two tenancy agreements at the outset of the tenancy. She signed the first one on April 12, 2002. She pointed out that an error appears on it, in that it is dated 2001 but it also shows that the tenancy begins on May 1, 2002. Parking is included, and the tenant testified that she has had a parking spot for 8 years and now the landlord wants to take it away. The tenant has homemakers

attend to assist her twice per day for medical reasons, and the landlord has blocked her assigned parking spot with 5 gallon buckets. He had showed her 2 parking spots that were for visitors to the complex and has now changed the rules; home support workers and guests are getting yelled at by the landlord when they park there.

She further testified that the landlord took the stove out of the unit and replaced it with a hot plate about 3 years ago. When the hot plate broke and she asked the landlord for repairs, he responded, "In due time." The tenant did receive one but she had nothing to cook on that week from Wednesday to Sunday.

The tenant further testified that she has never been given any copies of the utility bills; the landlord tells her how much the monthly bills are by letter delivered annually.

She further testified that the landlord harasses her about leaving the patio door open; he has banged on the door yelling at her smelling of alcohol on his breath. On one occasion he stood by the tenant's patio taking pictures of her through the patio door. She asked him to stop but he didn't so she closed the door and curtains. He has yelled at her guests and home support workers, 20 times or more in the last year.

The landlord testified that the unit is an illegal suite in the basement of a side-by-side duplex. He lives upstairs from this tenant and there are 2 other units. The City will not allow a stove in the unit; the tenant has a convection oven and a microwave oven.

He stated that he was not provided with the tenancy agreements that show the tenant is entitled to a parking spot when he bought the house. He further testified that he told the tenant there is limited parking and there are not visitor's parking spots.

He further testified that the tenant is paying less money than the actual hydro and satellite TV bill and that he will give them to her if she wants them.

He stated that he needs the tenant to keep the patio door closed to prevent rats, however he also stated that the tenant has a cat and the cat box on the patio causes an odour in his unit.

He also stated that the buckets are in the parking spot to prevent pumpers of vehicles from going onto the sidewalk because there is no concrete barrier.

Analysis

I have examined the tenancy agreement which states that electricity and cablevision are not included with the rent, and the landlord has an obligation to give copies of those bills to the tenant unless the utilities are in the name of the tenant, in which case, the tenant would pay those bills directly.

Further, Section 28 of the *Residential Tenancy Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant has not applied for a monetary order for her loss of quiet enjoyment however I find that taking pictures of a tenant through the window of her unit and placing buckets in her parking spot are clearly breaches of the *Act*.

The tenancy agreement showing that this tenancy started on May 1, 2002 clearly shows that the tenant is entitled to a parking spot. The parties are bound by that tenancy agreement. Sections 27 and 30 of the *Act* state 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.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

I caution the landlord that unreasonably restricting access to the parking spot that the tenant is entitled to could cause a devaluation of the tenancy and the tenant could apply for return of a portion of the rent for removal of a portion of the residential property. If the landlord feels the necessity of taking away the parking spot, the landlord must do so in accordance with Section 27.

Conclusion

I order that the landlord comply with the *Act* by allowing the tenant the use of her parking spot, and by removing the buckets and any other debris from that area and keeping the area clear of debris for the use of that parking spot by the tenant or her guests.

I further order that the landlord provide to the tenant copies of all utility bills that she is required to pay in future, and that the landlord provide the tenant with copies of paid utility bills in order to satisfy the tenant that the correct amounts were paid.

I further order that the landlord provide the tenant with her right to quiet enjoyment by refraining from yelling at the tenant or her guests and by refraining from taking pictures of the tenant, her property or her guests and their property.

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: July 12, 2010.

Dispute Resolution Officer