



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: ERP, RP, OLC, LRE, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for an order seeking landlord's action to comply with the *Act* and conduct emergency repairs. The tenant also applied for an order to set conditions on the landlord's right to enter the rental unit and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on October 18, 2010. The tenant filed a receipt with a tracking number. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord negligent in her responsibilities to provide adequate hot water and services as per the tenancy agreement? Does the landlord comply with the *Act* with regard to entering the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2010 for a fixed term of two months. At the end of the term the tenancy continued on a month to month basis. The monthly rent is \$775.00 due on the first of each month.

The rental unit is located in a home that houses other tenants. All the tenants have separate bedrooms and share a common area. The tenant's rental situation can be described as "Tenants in common". Pursuant to section 13 of *Residential Tenancy Policy Guideline*, tenants in common are tenants sharing the same premises or portion of premises and have entered into separate tenancy agreements with the landlord.

A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy.

The tenant's concerns are as follows:

1. Number of occupants in the home and use of common areas:

The tenant stated that when he first viewed the rental unit , he was told by the landlord that he would have the use of two common living rooms and that there would be approximately seven occupants in the home. The tenant stated that early into the tenancy one of the living rooms was converted into a bedroom and rented out. At the time of the hearing, the tenant stated that there were nine tenants in the home which resulted in increased use of the common areas.

In a note to the tenant dated September 25, the landlord explained that when she toured the house with prospective tenants, she explained the layout of the bedrooms and indicated which rooms would be occupied by tenants. She states that she explained that she may rent out what she refers to a "third" living room.

2. Maintenance of the home:

The tenant stated that the landlord does not maintain the house regularly as it is slated for demolition. He stated that the recycling boxes are inadequate for the number of occupants, the hot water runs luke warm sometimes and there are no smoke alarms in the home. The tenant stated that he made verbal complaints to the landlord but she did not take any action. In her note dated September 25, 2010, the landlord described the efforts she had made and continues to make to have a second hot water tank installed.

3. Threats of eviction:

The tenant stated that the landlord was having problems with one of the occupants and asked the tenants for their support. He said that the landlord threatened him with eviction if he did not support her in her attempt to evict the problematic tenant. The tenant filed correspondence from the landlord. This note dated September 25, 2010 states *"It was not my intention at all to sound like there were any threats of leases not being extended and my apologies if that was how it was perceived"*

4. Landlord's right to enter the property:

The tenant stated that the landlord enters the house without giving the occupants 24 hour notice and states that she has the right to enter the common areas of the house for the purpose of making improvements to the house. In her note the landlord confirms that she has the right to enter the common areas without notice and agrees that she has to provide 24 hours notice to enter the private areas of the house.

Analysis

1. Number of occupants in the home:

The tenancy agreement does not specify the size or number of rooms that make up the common area. The evidence filed by the tenant contains a note from the landlord which states that she explains the layout of the house to a prospective tenant when she shows them the rental unit. Therefore, as long as the premises are in keeping with the standards of safety and security, the landlord is permitted to rent to tenants in common. There is no provision in legislation that restricts the number of tenants that a landlord can have as long as all tenancies are in compliance with the *Residential Tenancy Act*.

2. Maintenance of the home:

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

I find that the number of recycling boxes is inadequate and the landlord must provide additional boxes. The landlord must also install smoke alarms to be in compliance with the local by laws.

3. Threats of eviction:

The landlord explained in her note dated September 25, that she did not intend to evict any tenants for lack of support in her attempts to evict a problematic tenant. She also apologized if her statements were perceived in this light.

4. Landlord's right to enter the property:

Section 29 of the *Residential Tenancy Act*, addresses a landlord's right to enter a rental unit. The landlord must give the tenant at 24 hours written notice that includes information on the purpose for entering along with the date and time of the proposed visit.

However this applies to the rental unit occupied solely by the tenant and not to the common areas. It is not reasonable for the tenant to have expectations of privacy in the common area and therefore, the landlord has the right to enter the common area for the purpose of maintenance and improvements without providing the tenant with notice.

Conclusion

I find that the tenant has not proven that the landlord failed to meet her obligations under the *Act*, with regard to providing services and facilities that are essential to the tenant's use of the rental unit as living accommodation. However, I order the landlord to provide adequate provisions for recycling and to install smoke alarms for safety reasons. I also order the landlord to serve 24 hours written notice if she intends to visit the private rental areas of the home.

The tenant has proven a portion of his case and is therefore entitled to recover the filing fee of \$50.00. The tenant may deduct this amount from a future rent

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: November 12, 2010.

Dispute Resolution Officer