



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes FF, RR, LRE, OLC

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The applicants are requesting an order that the landlord comply with the residential tenancy act, an order suspending the landlords right to enter the rental unit, an order reducing the rent for repairs, services or facilities not provided, and an order for recovery of the filing fee.

Background and Evidence

Both the applicant and the respondent agreed that the basement of this rental unit is not included in the rental, although access is allowed for use of washer and dryer and a second refrigerator.

The applicant testified that:

- The landlord has given short notice to do major renovations in the basement below the portion they are renting.
- There is no door between the basement area and the area that they rent and therefore they feel this is a security concern, as the persons doing the construction could easily access their rental area.

- Also one of the tenants works shift work and sleeps during the day and therefore this is a major breach of that tenants right to quiet enjoyment of the rental unit.
- The landlord also violated their rights by entering even though they had posted notice requesting that she not do so.
- As they see it, the landlord has only two options:
 - Stop all construction and disruption of their quiet enjoyment.
 - Serve them with a two month Notice to End Tenancy prior to starting the renovations, and compensate them with one free month's rent.

The respondent testified that:

- The basement is not included in the residential tenancy and therefore she believes she has the right to do renovations in this area.
- The first thing her contractor is going to do is install a locking door between the applicant's rental area and the basement area, so that no one other than the tenants can access their rental area.
- All work will be done between the hours allowed for entry under the Residential Tenancy Act, and therefore she does not believe she is breaching the Act.
- They did enter the rental unit, but only after giving a proper 24-hour written notice to do so, as allowed under the Residential Tenancy Act.
- The tenants will also be given the key so that they can continue to access the washer and dryer.
- She had been willing to negotiate with the tenants for compensation for loss of use and enjoyment; however the tenants are not willing to negotiate.

Analysis

It is my decision that I find in favour of the landlord.

The basement area of this rental unit is not included in the rental, and therefore the landlord has the right to renovate it, if she so desires.

Further since the basement area of this rental unit is not included in the tenancy, I have no right to suspend the landlord's access or set conditions on her access to the basement area.

Since access to the basement area, at this time, is through the upper unit that is rented by the applicants, it is my decision that the landlord must give 24 hour written notice to enter for the purpose of having the contractor installed a door between the two areas, however once that door is installed no further notice is required.

It is also my decision that the tenants claim for rent reduction is not justified because they have not lost any service or facilities agreed upon in the tenancy agreement, because even after the door is installed the tenants are to be given the key so they can still access the washer and dryer.

The tenant argued that the work will violate their right to quiet enjoyment; however it is my decision that as long as the work is done during normal business hours, the landlord has the right to do that work. If after the work has been completed the tenants are able to show that they suffered a loss of use and enjoyment of the rental unit, they would still have the right to file a claim at that time.

Conclusion

This application is dismissed in full.

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: February 09, 2011.

Residential Tenancy Branch