



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

At the beginning of the hearing, the Landlord confirmed that he received the Tenant's Application, Notice of Hearing and evidence (the "hearing package") on July 18, 2011. The Landlord said that he believed his counsel had submitted evidence on his behalf for the hearing, however no such evidence was received by the Dispute Resolution Officer. The Landlord agreed to provide a copy of the Parties' tenancy agreement via fax following the hearing.

At the beginning of the hearing the Tenant confirmed that the other party named as a tenant on his application (C.B.) was his 6 year old daughter who was not a party to the tenancy agreement. In the circumstances, I find that C.B. is not properly named as a party to these proceedings and the style of cause is amended by removing her.

Issue(s) to be Decided

1. Is the Tenant entitled to an order restricting the Landlord from entering onto the rental property?

Background and Evidence

This tenancy started on March 27, 2011. The Tenant claimed that at some later date he and the Landlord entered into a written tenancy agreement. The Parties agree that under the terms of the tenancy agreement, the Tenant has the exclusive use of the rental unit (a house) and the shared use of the yard with the Landlord provided that the Tenant cuts and waters the lawn. Under the terms of the tenancy agreement, the Landlord has the exclusive use of a garage (which he uses for storage). The Tenant agreed that the Landlord also has the exclusive use of a greenhouse, shed, and parking area behind the garage where he keeps a trailer.

The Tenant claims that the Landlord attends the property 2 to 3 times per week to repairs cars, pick up his camper, attend to some grape vines, change tires, fill up water jugs and so forth. The Tenant said the Landlord does not give him any notice that he will be attending the rental property and this interferes with his privacy. The Tenant admitted that the Landlord has not entered onto the property as frequently since he filed his application in this matter, however, he sought an Order requiring the Landlord to give him notice when he would be attending.

The Tenant also claims that the Landlord left a cat on the rental property and he leaves food and water for it in the greenhouse. The Tenant said other cats come onto the rental property and fight with the Landlord's cat. The Tenant also said the cat has on at least one occasion brought a dead animal into the rental unit and when he tried to remove it, the cat bit him. The Tenant admitted that the Landlord told him that the cat would be left on the rental property however the Tenant said he did not know the Landlord intended to leave it there permanently. The Tenant said he had a good relationship with the Landlord until recently when they got into an argument about the cat and the Landlord stuck his finger in the Tenant's face and told him that the cat was staying but that he could leave.

The Landlord argued that he does not interfere with the Tenant's use of the rental unit. The Landlord also argued that he has a right to use the yard and out buildings on the rental property whenever he wants because the Tenant does not have the exclusive use of the yard under the tenancy agreement. For similar reasons, the Landlord argued that he has a right to leave his cat on the property and the Tenant does not have a right to interfere with it by closing up the greenhouse or chasing it away. The Landlord further argued that Tenant was well aware at the beginning of the tenancy that the cat would be staying on the property.

Analysis

Section 70(2) of the Act says as follows:

"If satisfied that a Landlord is likely to enter a rental unit other than as authorized under s. 29, the director, by order may authorize the tenant to change the locks, keys or other means that allow access to the rental unit, or prohibit the Landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit."

The Parties agree that the Landlord has not contravened s. 29 of the Act by entering the rental unit without the Tenant's consent or giving written notice. Consequently, I find that this section of the Act does not apply in this matter and the Tenant is not entitled to an Order under this section of this Act which authorizes the placement of restrictions on the Landlord's right to enter ***the rental unit***.

Instead, I find that s. 28 of the Act applies in this matter and that section states (in part) as follows:

“A Tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord’s right to enter in accordance with s. 29 and the use of common areas for reasonable and lawful purposes, free from significant interference.

The Parties agreed at the hearing, that the Tenant did not have the exclusive use of the yard but was to have the shared use of it with the Landlord provided that he cut and watered the grass. Consequently, I find that the yard is a common area and that the Landlord is permitted to be there without the consent of the Tenant. As a result, I find that there is no authority under the Act to Order the Landlord to give the Tenant notice of when he will be attending the rental property to use the yard or outbuildings.

However, s. 28 of the Act also says that a Tenant has a right to privacy and the use of the common areas (such as the yard) free from *significant interference*. Consequently, if the Landlord continues to attend the rental property on a frequent basis that interferes with the Tenant’s right to reasonable privacy and allows his cat to run around the rental property and interfere with the Tenant’s use of the rental unit, then the Tenant may be entitled to compensation for a loss of quiet enjoyment. Furthermore, if the cat should pose a health risk, then the Tenant may be entitled to an order having it removed from the rental property. However, the Tenant did not make a claim for this relief on his application, and I make no finding at this time as to whether there has been a breach of this right by the Landlord.

Conclusion

The Tenant’s application in this matter is dismissed with leave to reapply should there be further incidences such as those described in the preceding paragraph. 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: August 15, 2011.

Residential Tenancy Branch