



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP PSF O

Introduction

This hearing dealt with an application by the tenants for an order for repairs and an order that the landlord provide services or facilities required by law. Both tenants, the landlord and a translator for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Should the landlord be ordered to do repairs?

Should the landlord be ordered to provide services or facilities required by law?

Background and Evidence

The tenancy began on September 1, 2010. The rental unit is a suite in the lower portion of a house. The landlord lives in the upper portion of the house. The landlord and tenants share use of the back yard.

Within the rental unit, there is a utility room that can only be accessed through one of the bedrooms. The electrical panel for the house is located in the utility room. At the outset of the tenancy, the landlord and the tenants stored some of their possessions in the utility room. On September 27, 2011 the landlord changed the lock on the utility room door, and did not give the tenants a key.

Off the living room of the rental unit there is also a storage closet, which has remained locked from the outset of the tenancy and to which the tenants have had no access.

The back yard of the property is enclosed by a fence. The fence is in a poor state of repair, and it was recently further damaged when a bear entered the property. The landlord and tenants had been storing their household garbage outside the house in a steel container. When the bear came onto the property, it destroyed the garbage container.

There is a stairwell separating the rental unit from the landlord's residence upstairs. The door between the stairwell and the rental unit is not a proper door, only a foldable closet-type door with spaces at the top and bottom. The landlord was using mothballs in the stairwell area, and on September 24, 2011 the tenants requested in writing that the landlord remove the mothballs, as the odour of the mothballs was overwhelming and making the tenants nauseous.

The evidence of the tenants on their application was as follows.

1. Storage areas – since the landlord changed the lock on the utility room on September 27, 2011, the tenants have been unable to enter that space. Some of the tenants' possessions are still in the utility room, but they cannot access their possessions. Further, the tenants cannot access the electrical panel, and have to rely on the landlord to come into their unit if there is a problem with the breakers. The landlord must enter the rental unit in order to access either the utility room or the storage closet off the living room. The tenants seek an order giving them access and exclusive use of both the utility room and the storage closet.
2. Use of the back yard – the tenants' daughter and her friends often play in the back yard. When they do so, the landlord comes into the back yard to do yard work, and will follow the children around in the back yard. On one occasion, the landlord's grabbed the arm of the tenants' daughter and verbally confronted the girl about leaving lights on. The tenants seek an order that will ensure mutual respect and boundaries when the tenants are using the back yard.
3. Fence repairs – the tenants seek an order for the landlord to properly repair the fence.
4. Garbage disposal – since the bear destroyed the garbage container, the tenants have not wanted to store their garbage outside. They have been forced to temporarily store their garbage inside the rental unit. The tenants seek an order requiring the landlord to immediately address this health and safety issue.
5. Mothballs– the tenants can still smell the odour of mothballs coming from the stairwell outside their unit. The tenants seek an order requiring the landlord to remove the mothballs, as they are not permitted in residential premises and pose a health risk.

The landlord's response to the tenants' application was as follows.

1. Storage areas – at the outset of the tenancy, the landlord made it clear to the tenants that the utility room and storage closet were not included in the rental unit. The landlord changed the lock on the utility room door because the lock was not smooth. The landlord did not know it was an issue that she changed the lock because the room had always been locked before. The landlord always gives the tenants notice before accessing either of these storage areas.
2. Use of the back yard – the landlord never intended to interfere with the tenants' privacy. One time the kids were removing rocks that were part of the landscaping, so the landlord put them back. The landlord acknowledged that she spoke to the tenants' daughter about leaving so many lights on, and she may have touched the girl's shoulder.
3. Fence repairs – the fence is shared with a neighbour, and the landlord is currently working with the neighbour to replace the fence.
4. Garbage disposal – the landlord acknowledged that a bear did destroy the garbage container. Right now the landlord does not know how to deal with the garbage storage.
5. Mothballs – as soon as the tenants informed the tenants of the problem with the mothballs, the landlord removed the mothballs. However, the landlord will see if any were left behind.

Analysis

1. Storage areas – I find that the utility room and the storage closet are part of the rental unit, and must be for the exclusive use of the tenants. The landlord did not provide sufficient evidence that those spaces were specifically excluded from the rental unit. The landlord must immediately remove all of her possessions from the utility room and the storage closet, and surrender exclusive use and possession of those two spaces to the tenants as part of their rental unit.
2. Use of the back yard – section 28 of the Act states that tenants are entitled to quiet enjoyment, including reasonable privacy and use of common areas for reasonable purposes, free from significant interference. In this case I find that the landlord has been disturbing the tenants' quiet enjoyment and reasonable use of the back yard. I order that the landlord comply with section 28 of the Act

and provide the tenants reasonable privacy and quiet enjoyment of the back yard, free from the landlord's interference.

3. Fence repairs – I do not find it necessary to make an order for repairs to the fence, as the landlord is already working with the neighbour to repair the fence.
4. Garbage disposal – the landlord is responsible for maintaining the rental property in a state that complies with health and safety standards. I order the landlord to immediately take steps to provide appropriate garbage storage for the tenants.
5. Mothballs – I accept the testimony of the landlord that she will ensure that all moth balls are removed, and I find that no order is required to address the issue of the mothballs.

The tenants did not apply for any order regarding the foldable closet door that separates the rental unit from the stairwell. However, based on the tenants' description of the door, it likely does not meet safety and security requirements. It would be prudent for the landlord to address this issue immediately.

Conclusion

The landlord is ordered to address the issues of storage space, privacy in the back yard and garbage disposal as detailed above. If the landlord fails to comply with these orders, it is open to the tenants to apply for monetary compensation.

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: October 28, 2011.

Residential Tenancy Branch