



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, RPP, AAT, MNDC, RR, FF, O

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act or tenancy agreement, for an Order that the Landlord make repairs, for an Order granting the Tenant access to the residential property, for a rent reduction, for compensation for the cost of printing documents and photographs, for service expenses and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are repairs required?
2. Is the Tenant entitled to access to a bicycle shed where her bicycles are stored on the rental property?
3. Is the Tenant entitled to a rent reduction?
4. Is the Tenant entitled to compensation for her documentary evidence expenses for the dispute resolution hearing?

Background and Evidence

This tenancy started on September 1, 1998. Rent is \$735.00 per month which includes heat. The Landlord purchased the rental property in October of 2005.

The Tenant claimed that in March 2011, the Landlord gave her a Notice of Rent Increase that did not comply with the Act and that after she brought this to his attention, he started harassing her. The Tenant admitted that the Landlord later gave her a corrected Notice when she brought it to his attention, but argued that he back-dated it.

The Tenant said she got a letter from the Landlord dated April 18, 2011 in which he advised her that she could no longer pay her rent in bi-monthly instalments and that she had to remove her belongings from the bicycle storage shed by April 24, 2011 (after which the locks would be changed). The Tenant said on or about August 3, 2011 the Landlord removed boxes as well as her golf clubs and a cart without her consent and put them in his garage. The Tenant said when she discovered this she contacted the police and shortly thereafter the Landlord returned her belongings. The Tenant said the Landlord also changed the lock on the bicycle shed and would not give her a copy of a key to it so she could not access the bicycles she had stored there. The Tenant said the Landlord also acted in a retaliatory manner by mowing down some lilies that she

had growing by her first floor balcony. Consequently, the Tenant sought an Order restraining the Landlord from engaging in conduct that interfered with her right to quiet enjoyment.

The Landlord denied that he was harassing the Tenant. The Landlord claimed that despite his numerous requests to the Tenant to remove boxes of her items from the bicycle shed she failed or refused to do so and as a result, he moved them to another location for safe keeping. The Landlord said he was unaware that the golf clubs and cart belonged to the Tenant. In any event, the Landlord said the shed was strictly for storing bicycles and he was unaware that the Tenant had any bicycles stored there. The Landlord agreed to give the Tenant a key to the shed provided that she only stored one bicycle there. The Landlord said he only agreed to let the Tenant make bi-monthly payments for a temporary period to help her out and that it had become an inconvenience to him to process two rent payments each month so he asked her to make one payment per month. The Landlord said he did not intentionally cut down the Tenant's lilies; he claimed that they were in poor condition and therefore he mistook them for weeds.

The Tenant claimed that there is excessive condensation on her sliding glass balcony doors which she believed was caused by improper ventilation and a broken seal. The Landlord said the building was constructed in the 1970s and therefore he admitted that the single pane glass likely contributed to some of the condensation, however the Landlord said much of the condensation could be controlled by using bathroom and kitchen exhaust fans. The Landlord agreed that he would have someone look at the seal on the doors on or about December 1, 2011 and repair it if it was needed. The Tenant also claimed that her suite has not been painted for the entire time she has occupied it and she sought to have it repainted in the Spring months of 2012. The Landlord agreed to do this.

The Tenant also claimed that it is the Landlord's practice to shut off the heat in the rental property from May to October in each year and that at times it has been uncomfortably cold in the rental unit. As a result, the Tenant said she has had to rely on a secondary source of heat (ie. an electric heater) which creates an additional expense to her. The Tenant said she is not seeking compensation for this and admitted that at present, this is not an issue. The Landlord denied that he has turned off the heat leaving occupants in the cold.

The Tenant further claimed that the Landlord removed door stops in the corridors making it inconvenient for elderly residents to use walkers and for people to bring in bulky items such as furnishings when they move in or out. The Landlord said he removed the door stops because he was advised by the fire department that these doors had to remain shut at all times to comply with fire regulations.

Analysis

Order restraining the Landlord: Section 28 of the Act says that “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 under s. 29 of the Act and the use of common areas for reasonable and lawful purposes free from significant interference.”

Section 67 of the Act provides the Director with the authority to grant compensation to a party who has suffered damage or loss as a result of another party’s breach of the Act or tenancy agreement. With the exception of section 70 and of the Act, the Act *does not* confer on the Director the authority to restrain a party from interfering with, harassing or otherwise place restrictions on how a party conducts themselves around another party. In those cases, such authority lies with the Provincial Court of British Columbia which has the jurisdiction to issue civil restraining orders. Consequently, I find that there is no jurisdiction to grant this relief to the Tenant and her application for it is dismissed without leave to reapply and I specifically note that I make no finding as to whether the Landlord has engaged in retaliatory or harassing conduct as alleged by the Tenant.

Heat: Section 27(1) of the Act says that “a landlord must not terminate or restrict a service or facility that is essential to the Tenant’s use of the rental unit as living accommodations and is a material term of the tenancy agreement.” I find that the provision of heat is included in the Tenant’s rent and is a material term of the tenancy agreement. However, the Tenant admitted that she was not seeking compensation for her costs of using a secondary source of heat. The Tenant also admitted that a lack of heat is not currently an issue. Consequently, if and when this should become an issue the Tenant must first provide some evidence that the ambient temperature in the rental unit renders it unfit for occupation before an order can be made to compel the Landlord to provide heat. As a result, I find that the Tenant’s application for this relief is premature and it is dismissed with leave to reapply.

Corridor Door Stops: The Tenant sought an order that the Landlord re-install corridor door stops for the convenience of the occupants of the rental property. However the Landlord argued that he is required under fire and safety regulations to keep these doors closed. In the circumstances, I find that the safety of the occupants of the rental property outweighs their convenience and as a result, this part of the Tenant’s application is dismissed without leave to reapply.

Repairs: The Landlord agreed that he would check the integrity of the seals on the Tenant’s sliding glass patio doors and repair them if necessary. The Landlord also agreed that he would paint the rental unit in April of 2012. Given the agreement of the Parties on this issue, I make no order for repairs. However, the Tenant may reapply for this relief if the repairs are not made.

Bicycle Storage: Section 27(2) of the Act says that “a Landlord may terminate or restrict a service or facility, if he gives a tenant 30 days notice and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy resulting from the terminated service or facility.” The Tenant admitted that the use of the bicycle storage shed is not included in her rent under the tenancy agreement. The Tenant argued however that she has been using this facility for many years and is therefore entitled to store at least 2 of her 3 bicycles in it. The Landlord said there are 16 suites in the rental property and 12 spots in the shed for bicycles. Consequently, the Landlord said it is his policy to allow one bicycle slot per suite occupant and as the Tenant is the sole occupant of her suite, she is only entitled to one. The Tenant argued that at present there are only 8 bicycles stored in the shed, 3 of which belong to her.

I find that the use of the bicycle storage shed is not a service or facility that is included in the Tenant's rent but rather is provided by the Landlord to accommodate Tenants and ensure that they do not bring their bicycles into the main building. Consequently, I find that the Landlord may restrict the use of this shed to the Tenant provided that he does so reasonably. Given that there are only 12 bicycle storage slots to accommodate all occupants of the 16 suites in the rental property, I find that the Landlord's current allotment process is reasonable. Consequently, ***I order the Landlord to provide the Tenant with a copy of the key to the storage shed no later than December 1, 2011 and I also order the Tenant to remove 2 of her bicycles from the storage shed no later than December 1, 2011.***

Rent Reduction: The Tenant claimed that this part of her application was dependent on whether the Landlord complied with any order made for repairs and for access to the bicycle storage shed. In the circumstances, I find that this part of the Tenant's application is premature and it is dismissed with leave to reapply.

Compensation for Costs: The Tenant sought compensation of \$37.41 for photograph expenses, \$199.51 for printer cartridges with respect to the documentary evidence she provided in support of her application. The Tenant also sought to recover registered mail expenses of \$10.23 for serving the Landlord with her hearing package for this proceeding. However, the Act does not provide for the recovery of costs in connection with preparing for dispute resolution proceedings and as a result, this part of the Tenant's application is dismissed without leave to reapply.

The Tenant also sought to recover the \$50.00 filing fee she paid for this proceeding. However, given the limited success of the Tenant in this matter, I find that it is not an appropriate case to order the Landlord to bear this cost and as a result, this part of the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is granted in part on the above-noted terms. 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 07, 2011.

Residential Tenancy Branch