



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, RR

Introduction

This hearing dealt with the tenant's application for Orders for compliance and repairs and authorization to reduce rent for repairs, services or facilities not provided. The landlord did not appear at the hearing. The tenant testified that she sent the hearing documents to the landlord at his service address via registered mail on August 23, 2012. The tenant testified that the registered mail was returned to her as "refused" by the landlord. Further, the landlord has ceased all contact with her since she refused to sign an Addendum the landlord presented to her after the tenancy commenced.

The Act provides that a person is deemed to be served with documents five days after mailing. A person cannot avoid service by refusing to accept or pick up registered mail.

Based upon the tenant's testimony, I accepted that the tenant served the hearing documents upon the landlord and the landlord refused to accept the documents. Accordingly, I found the landlord sufficiently served and I proceeded to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is it necessary to issue Orders for compliance against the landlord?
2. Is it necessary to issue repair Orders to the landlord?
3. Has the tenant established an entitlement to reduce rent for repairs or services or facilities not provided to her?

Background and Evidence

The residential building was originally constructed as a side-by-side duplex. Basement suites have been added to each side. The tenant lives in one of the basement suites with her three children. The unit above her is occupied by other tenants: two adults and two children. The landlord resides in the other side of the duplex.

The landlord and tenant signed a one-year fixed term tenancy agreement dated July 1, 2012 for a tenancy set to commence July 1, 2012. The tenant is required to pay rent of \$900.00 on the 1st day of every month.

The tenancy agreement provides that, among other things, the following is included in rent:

- Garbage collection
- Parking for 2 vehicles
- "Shared back yard"

The tenant submitted that the provision of the above services and facilities have become issues that the tenant raised with the landlord. The landlord responded by preparing a document entitled "Addendum" and presented it to the tenant for her signature in early August 2012. The tenant refused to sign the document as she did not agree with the terms. After failed attempts to further communicate with the landlord, the tenant filed this Application seeking resolution to these issues.

During the hearing, the tenant confirmed that since the Application was filed the parking issue has largely been resolved. The following issues remain unresolved:

Garbage collection and Mice

The tenant submitted that the landlord provides only one garbage can, one recycling bin, and one compost bin for weekly pick-up for a total of 8 people residing on her side of the duplex. The containers provided are not sufficient to handle the waste generated for that many people. Consequently, the tenant has been instructed by the landlord to leave any excess garbage in her unit until after the bins are emptied.

The tenant submitted that she has been storing her excess garbage in her unit as instructed by the landlord which has attracted mice to her unit.

The tenant is requesting that the landlord provide additional garbage, recycling and compost bins and arrange for pick-up by the waste.

The tenant is also seeking authorization to acquire a cat to deal with the mice infestation and an order that the landlord waive pet damage deposit. The tenant explained that she is seeking permission to have a cat because the upper tenants have a cat and because poisons are detrimental to her existing health conditions.

Shared Back Yard

The tenant submitted that her tenancy agreement provides for a shared back yard; however, the upper tenants were unhappy having to share the back yard and have reacted by: yelling at the tenant's children; moving and disconnecting the tenant's hose and sprinkler; and, prohibiting the tenant or her children from using certain structures erected in the back yard.

The landlord responded to the issue by dividing up the back yard into sections on a diagram and limiting the tenant's use to a specific area by way of the Addendum. The tenant finds the landlord's solution unsatisfactory as the tenant is provided only 30% of the available yard space and the space is insufficient for the tenant's children to use. The tenant also stated that she does not have sufficient storage space for outdoor supplies or toys and is concerned that any items left outside may be damaged.

The tenant requested the back yard be divided in half and the landlord ordered to erect a fence to separate her space from the upper tenant's space. Alternatively, the tenant requested an Order that she be permitted to share the entire back yard.

Repairs

1. Weather-stripping

The tenant described how both the upper unit and the basement suite use one common entry door that leads to a stair way. Each unit is separated from the common entry by a thin metal door at the top or bottom of the stairs. The interior doors are not properly sealed with weather-stripping.

The tenant submitted that the upper tenants frequently leave the common entry door open, even when they are not home. The tenant has brought this to the attention of the upper tenants to no avail. The tenant expressed how this has been problematic for her in the following ways: heat from the outside enters the building and causes the air conditioner to run excessively; insects and mice enter her unit; the tenant's children are able to quickly leave the building and towards the busy street.

The tenant requests the appropriate seal or weather-stripping be installed on her interior entry door.

2. Toilet lid

The tenant submitted that the landlord is aware that her toilet does not have a lid. The landlord has told the tenant he cannot locate one that fits. Consequently, the tenant has a piece of plywood over her toilet. The tenant is requesting she be provided with a toilet seat that has a lid.

3. Slow drain

The tenant submitted that the kitchen sink drains very slowly and the landlord knows of this issue but has not repaired it. The tenant is requesting the landlord address this issue.

Rent Reduction

The tenant is seeking a rent reduction of up to \$200.00 per month until such time the following is resolved:

- a. More garbage, recycling and compost bins are provided and garbage collection is sufficiently increased.
- b. The tenant is allowed to share the back yard equally with the upper tenants.
- c. Her entry door is properly sealed with weather-stripping.

Analysis

The Act provides for ways a tenancy agreement may be changed or altered. In order to change or add terms to a tenancy agreement both parties must mutually agree to the changes. In this case, the landlord has attempted to deal with the issues that have arisen between the upper tenants and the tenant of the basement suite by way of the Addendum. Since the tenant did not agree to the changes or terms proposed by the landlord in the Addendum, I find the terms expressed in the Addendum are not enforceable.

In order to resolve this dispute I have considered the terms that appear in the signed tenancy agreement and the requirements of the Act. I have also taken into consideration any relevant Residential Tenancy Policy Guideline.

Upon consideration of the evidence before me I provide the following findings and reasons with respect to the tenant's application.

Garbage Collection and Mice

The tenancy agreement provides that the landlord shall provide the tenant with garbage collection. I find it reasonable to interpret this term to include the provision of garbage collection receptacles and regular pick up of the household waste. The landlord in this case has been providing garbage collection; however, the issue is that the level of service is inadequate.

I note that the tenancy agreement does not limit the amount of garbage collection the landlord will provide. Therefore, I find the landlord is obligated under the term of the tenancy agreement to provide sufficient residential garbage collection taking into account the number of occupants in the unit.

The tenant has satisfied me that the garbage collection service provided by the landlord is insufficient given the number of occupants in the building sharing this service. I further find the tenant's request for additional garbage collection receptacles and increased pick-up to be reasonable in the circumstances.

Under the Act the landlord is required to maintain the property so that it is suitable for occupation by the tenant. The landlord is responsible for extermination of pests in a lawful manner. The landlord has the right to select the method of extermination and appropriate prevention strategies.

I deny the tenant's request for authorization to acquire a cat to deal with the mice and order the landlord to waive his entitlement to a pet deposit as a cat is not the only lawful and effective way to deal with mice. I appreciate the tenant does not want poison placed in her unit; however, mice may be eliminated by use of traps, among other things. Keeping of a pet and obligation to pay a pet deposit shall remain as provided by the tenancy agreement and Act.

In light of the above, **I ORDER the landlord to do the following within one-week of receiving this decision:**

- **Provide the tenant with: one garbage bin; one recycling bin and one compost bin for her own exclusive use, OR, provide two of each of type of bin for shared use by the tenants on the tenant's side of the duplex.**
- **Arrange or ensure that the additional garbage, recycling and compost bins will be picked up on a regular and sufficient basis.**

- **Inspect the rental unit for the presence of mice and commence appropriate extermination efforts.**

Shared Back Yard

The Act provides that every tenant is entitled to the right to quiet enjoyment, including the right to:

- reasonable privacy,
- freedom from unreasonable disturbance,
- exclusive possession of the rental unit, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

[my emphasis added]

Based upon the limited wording of the tenancy agreement I find the most reasonable interpretation of "shared back yard" is that the back yard is common property and that without specific limitations contained in the tenancy agreement, the tenant is entitled to reasonable and lawful shared use of the entire back yard. Meaning, the occupants of both the upper unit and the basement suite of the duplex are permitted to use the entire back yard, without interference from others.

I deny the tenant's request for a divided back yard with a fence as this goes beyond the entitlement afforded to her under the terms of the tenancy agreement and the Act. However, **I make the following ORDER to the landlord:**

- **Ensure the tenant is provided reasonable and lawful use and access to the entire back yard, free from significant interference by the landlord or other tenants.**

Should the tenant experience further interference by the other tenants it is upon the tenant to notify the landlord of such interference and allow the landlord the opportunity to deal with the other tenants. The landlord is further informed that if the tenant notifies the landlord of ongoing interference by the other tenants, the landlord has a statutory obligation to protect the tenant's right to quiet enjoyment.

Repairs

The landlord has a statutory obligation to repair and maintain the residential property so that it complies with health, safety, and building standards required by law. In addition, the unit must be maintained by the landlord so that it is suitable for occupation, taking into account the age, character, and location of the unit or property.

Upon consideration of the tenant's undisputed submissions, **I ORDER the landlord to do the following within two weeks of receiving this decision:**

- **Install a proper seal or weather-stripping on the tenant's entry door.**
- **Provide the tenant with a toilet lid or new toilet seat complete with lid.**
- **Provide the necessary repairs to the kitchen drain.**

Rent reduction

I found the tenant's request for a rent reduction not sufficiently specific or supported. I do not authorize a rent reduction with this decision so that the landlord may have an opportunity to comply with the orders contained in this decision.

Both parties are informed that should the landlord fail to comply with the orders contained in this decision the tenant may file a new application seeking monetary compensation starting from the deadlines imposed in this decision and a future rent reduction.

Conclusion

The landlord has been given a number of orders for compliance and repairs in this decision. Failure to comply with these orders may entitle the tenant to monetary compensation and/or a rent reduction under a future application.

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 2, 2012.

Residential Tenancy Branch