



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order for the landlord to comply with the *Residential Tenancy Act* (Act), regulations or tenancy agreement and other issues.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant had faxed a letter to the Residential Tenancy Office requesting an adjournment of this hearing. The tenant stated that the landlord had agreed to this adjournment. The landlord's agent testifies that the tenant did request an adjournment but the landlord was told by an Officer at the Residential Tenancy Office that the tenant has not allowed sufficient time for an adjournment to be granted. The hearing continued as scheduled.

Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month to month tenancy started on August 01, 2007. Rent for this town house unit is now \$765.03. A previous hearing took place on April 20, 2012 after the tenant had filed an application concerning repairs at the rental unit against the previous landlord. The tenant was successful at that time and received a Monetary Order. Since August 15, 2012 the property has been taken over by this landlord.

The tenant testifies that on the previous decision, page three, under the section titled Property Maintenance #6 the Dispute Resolution Officer presiding has stated in the decision that the landlord is responsible for cutting the grass. The tenant testifies that as her yard is a common area the landlord has not cut the grass or maintained the yard. The tenant testifies that a previous tenant had put up some chicken wire fencing around the yard however children run through the yard. The tenant testifies that other tenants have also fenced in their yards. The tenant testifies that there is also a common area that runs down the back of the yards that the landlord has not maintained. The tenant testifies that there has been another tenant who has cut other tenants lawns for the landlord.

The tenant testifies that after the previous hearing she was sent a document from the previous landlord called 'landlords and tenants expectations' which deals with whose responsibility it is for cutting the grass. The tenant testifies that although this document has her initials on it the tenant did not initial this and has never been given a copy of it before.

The tenant seeks an Order for the landlord to comply with the *Act* with regard to the tenant's lawn maintenance in the yard directly behind the tenant's rental unit and the common areas pursuant to s. 32 of the *Act*.

The landlord's agent testifies that they were given a copy of this document called landlords and tenants expectations from the previous landlord and this clearly has the tenant's initials on each page of the document. The previous landlord has written to the landlord confirming that all tenants' are given a copy of this document and asked to initial each page at the start of their tenancy. The landlord's agent testifies that this is also confirmed by the clause in the tenancy agreement which the tenant has also signed which in which the tenant agrees that the rules and regulations which are the landlord and tenants expectation document was delivered with the tenancy agreement and shall be observed and performed by the tenant. The landlord's agent testifies that this document titled landlords/tenants expectations clearly states that it is the tenants responsibly to cut the lawns regularly and dispose of grass clippings and states that the landlord has no responsibility for this.

The landlord's agent testifies that the tenant lives in a town house and the yard at the back of the tenants unit is allocated to the tenants rental property and is not a common area as suggested by the tenant. The landlord's agent testifies that each tenant is responsible for cutting their own lawns and there is someone who maintains the yards for any empty units.

The landlord's agent testifies that the pathway the tenant refers to is a path to provide access to the back of the adjacent properties to cut back vegetation. The landlord testifies that the photographic evidence the landlord has provided shows that the other tenant's lawns are maintained and this tenant's yard is fully enclosed and has not been maintained. The landlord has provided a copy of a letter sent to the tenant in September requesting that the tenant maintains her yard by October 01, 2012.

The tenant testifies that she had written to the previous landlord's agent about yard maintenance however the previous landlord did not respond to the tenant concerning this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The tenant refers to the previous decision page three #6. I have reviewed the previous decision provided in evidence and find that this section of the decision refers to the Policy Guidelines concerning property maintenance as the tenant's previous application sought clarification on whose responsibility it was for yard maintenance. The previous decision does not state that it is the landlords responsibility it simply highlights that section of the Policy Guidelines.

The Policy Guidelines do state however that generally the tenant living in a town house who has exclusive use of the yard is responsible for routine yard maintenance which includes cutting grass and clearing snow. I find the documentary evidence provided shows that the tenant has initialed a landlord/tenant expectation document in which it details that the tenant is responsible for cutting grass and removing grass clippings. The tenant argues that she did not initial this document and has never had sight of it until after the previous hearing; however the initials on this document are similar to the tenant's initials on the tenancy agreement. Taking that evidence with the letter from the previous landlord stating the tenant was given a copy of this document and the section of the tenancy agreement referring to additional documents being given to the tenant I find it is reasonable to find that the tenant did initial this document at the start of the tenancy.

Consequently it is my decision that the tenant is responsible for cutting the grass in the yard allocated to the tenant's rental unit and not the landlord. Therefore the tenant's application for an Order for the landlord to comply with the *Act* has no merit.

The tenant has applied for 'other issues' on the application; however the tenant has not raised any further issues at the hearing.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 29, 2012.

Residential Tenancy Branch