



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RR, PSF, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Act, for an order allowing a reduction in rent, an order requiring the landlord to provide services or facilities required by law, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary issue- At the outset of the hearing, the evidence was discussed. The landlord said that he had not received all of the tenants' evidence; however upon further questioning, the landlord said the entire evidence was delivered to him, but not within 5 business days of the hearing. I informed the landlord that I would accept the tenants' evidence for consideration, but I did offer the landlord the opportunity for an adjournment of the hearing for purposes of being able to provide a response to the tenants' evidence. The landlord declined and the hearing proceeded.

Issue(s) to be Decided

Are the tenants entitled to a monetary order, a reduction in rent, and to recover the filing fee?

Are the tenants entitled to orders for the landlord?

Background and Evidence

The tenant said he thought the tenancy began in 2002-2003. The landlord said the tenancy started on March 1, 2006. Monthly rent is currently \$800.00 and, according to the tenant, the security deposit paid by him was \$300.00 and the landlord said the security deposit paid by the tenant was \$325.00.

Neither party submitted the tenancy agreement into evidence.

With the tenants' application, they have requested a monetary order for \$1500.00 and a reduction in their monthly rent; additionally they are seeking an order that the landlord comply with the Act and to provide for services required by the law.

The tenants' relevant evidence included photographs on the fence in question, a chiropractor bill, a physiotherapy bill, and letters from the tenants to the landlord.

In support of his application, the tenant said that when he first viewed the residential property, he had the choice of an apartment in the back of the property or the front. He chose the more expensive apartment to be able to see his dinghy moored at the waterside dock and for easier access to his boat. The tenant also said that the property manager at the time told him that he would be able to use the dock and have beach access.

The tenant submitted that in 2011, the landlord erected a fence which blocked the tenants' beach access, when previously they had unfettered access to the beach. Due to this, according to the tenant, he must use a treacherous path to go to his boat, which has resulted in injuries, requiring chiropractor and physiotherapy bills.

In response to my question, the monetary claim is comprised of compensation for the above mentioned bills and anxiety in seeing the sign that says "No beach access."

In response to the application, the landlord said there is nothing in the tenancy agreement providing the tenants with beach access. Additionally the landlord said that

after a consultation with his insurance representative, the decision was made to erect the fence for legal liability purposes.

The landlord also submitted that the ground floor, at the time of the fence being erected, had small children residing there, and that dangerous people often traversed the edge of the property in going to the park on the other side.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find the tenants have not provided me any evidence that the landlord has violated the Act or the tenancy agreement. I do not accept that the landlord is unable to protect the residential property by constructing a fence for liability purposes and to protect ground floor tenants.

Neither party submitted the tenancy agreement for review; however neither did the tenant contend that such a term providing beach access was a term in the tenancy agreement. If such a term was so material to the tenant that he would not have entered into the tenancy otherwise, I find it likely that such a term would have been negotiated for inclusion in the written tenancy agreement.

Additionally, although the tenants may have enjoyed beach access, I do not find beach access is essential to the tenants' use of their rental unit, which is a necessary element of order the landlord to provide for a service or facility under section 27 of the Act.

I therefore find that the tenants are not entitled to a reduction in rent.

Also, the tenants' delay of nearly two years in filing an application seeking remedy through dispute resolution caused me to doubt how serious the issue was to the tenants; also I find the tenants have not minimized their alleged loss with the nearly two year delay, which is step 4 of their burden of proof in seeking compensation.

Due to the tenants' insufficient evidence that the landlord has violated the Act, the Residential Tenancy Branch Regulations, or the tenancy agreement, I find the tenants have not supported their application.

Conclusion

I therefore dismiss the tenants' application, 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: April 15, 2013

Residential Tenancy Branch