



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlords comply with the Act, and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Should the landlord be order to comply with the Act?
Is the tenant entitled to recover the cost of filing the application?

Background and Evidence

The parties agreed the tenancy commenced approximately 19 years ago. The parties agreed that there is no written tenancy agreement.

The tenant stated the tenancy has been relatively trouble free. The tenant stated that during the 19 years of tenancy he has not had many guest over to the rental unit, which is why the issue of guest has never been a major issue until recently.

The tenant stated that the landlord refuses to allow him to have guests. The tenant stated he has received emails, his guest vehicles have been photographed and they are collecting personal information of his guest by searching them on the internet. Filed in evidence are emails, and photographs.

The landlords stated they do not deny sending the email of April 4, 2013, stating the tenant is not allowed to have overnight visitors at any time while living at the house.

The landlords stated the photographs of the tenant's guest vehicle were taken when they were on holiday. The landlord stated at the time they were unaware that this tenancy falls within the jurisdiction of the Residential Residency Act, and will comply with the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant rents a basement unit, which is separate from the main portion of the home. The tenant pays rent to the landlord which means money paid in return for the right to exclusively possess the unit.

Every tenancy agreement contains the implied covenant of quiet enjoyment, which includes, but is not limited to, reasonable privacy, freedom from unreasonable disturbance, exclusive possession, 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.

On January 8, 2013, the landlord sent a letter to the tenant which in part reads, "This letter is to reconfirm the rules of living in the house here at (address). We do not allow any overnight guests at any time. You have had a guest staying overnight several times."

[Reproduced as written]

On April 4, 2013, the landlord sent an email to the tenant which in part reads, ".... You are not allowed to have overnight visitors at any time while living in our house. Our children and their partners can come and go as they please – they do not need our permission as this is their house as much as it is ours. You are a tenant, there is a big difference."

[Reproduced as written]

In this case, the landlord has attempted to restrict the tenant's right to have overnight guest. Under Section 30 of the Act, a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant.

While I accept the landlords did not take the photographs of the tenant's guest vehicle, as they were out of town. However, these photographs were taken by someone who they have allowed onto the property and are therefore responsible for their actions when it interferes with the tenant's rights. The landlords are required under the Act to protect the rights of the tenant, which also includes the right to reasonable privacy.

The landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to residential tenancies.

I find the landlords have violated Section 28 and 30 of the Act, by interfering with the tenant rights to quiet enjoyment.

The landlords are cautioned that if they continue or allow others to continue to engage in conduct that would infringe on the rights of quiet enjoyment of the tenant. That tenant may file a claim for compensation for damages. A copy of this decision may be produced in evidence in any further hearing.

The tenant is entitled to recover the cost from the landlords for filing this application. The tenant is entitled to deduct \$50.00 from June 2013, rent payable.

Conclusion

The landlords are order to comply with the Residential Tenancy Act.

The tenant is authorized to deduct \$50.00 from June rent, to recover the cost of filing the 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: May 03, 2013

