



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, RR, PSF, MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs to the rental unit, for 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, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The hearing was originally convened on May 8, 2013, and prior to hearing any of the merits of the tenants' application, the hearing was adjourned to the present. The interim decision dated May 10, 2013, should be read in conjunction with this decision.

The original hearing was adjourned as the landlord had issued the tenants a 1 Month Notice to End Tenancy for Cause (the "Notice"), and a hearing had been scheduled in response to the tenants' application for dispute resolution in dispute of the Notice. That hearing, conducted on May 24, 2013, resulted in the landlord's Notice being cancelled and allowing the tenancy to continue.

At the reconvened hearing, the tenants and the Executive Director for the landlord, a non-profit society, appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, 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.

At the outset of the hearing, there were no further issues raised about the service of each other's documentary evidence or the application.

I have reviewed all oral and documentary evidence 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.

Issue(s) to be Decided

Are the tenants entitled to orders for the landlord, a reduction in their monthly rent, a monetary order, and to recover the filing fee?

Background and Evidence

This tenancy began on or about June 1, 2008, the tenants' monthly rent is currently \$778, and they have not paid a security deposit. The rental house sits adjacent to a large parcel of nature sanctuary land, all of which is managed by the non-profit society and governed by a board of directors. The front of the rental unit is accessible by a public road, and the tenants are provided parking for two vehicles in the front of the house.

The tenant's relevant documentary evidence included a copy of a redacted police report, reference letters from a former Executive Director, former employees, and board members, an aerial GIS map of the sanctuary land, showing the rental unit and premises and other sanctuary land, a note from the female tenant's doctor, a note from the female tenant's employer, photographs of the entry way to the back of the tenants' premises using the shared driveway, and communication between the Executive Director and the tenants' legal counsel, and communication from the landlord's legal counsel.

The actions sought by the tenants in their application include a request that the employees or staff of the landlord not block the tenants' access to the back of their house using the shared driveway located along the back of their rental unit. In explanation, the tenants submitted that a certain staff member has blocked their access to their driveway by parking her vehicle there. Furthermore, according to the tenants, the staff, employees, and volunteers of the landlord do not understand that the long driveway located in the back of the rental unit and leading to a structure the tenants called a garage is not shared with the tenants. In support of this contention, the tenants pointed out the GIS aerial map showing that the rental unit and surrounding land, marked out as rental property, common area and sanctuary only land, which was posted on the garage door.

The tenants requested that the landlord be ordered to inform all staff, employees, and volunteers that the tenants could use the extended driveway on sanctuary land in the back of their property.

The tenants also said that their rights to privacy have been compromised due to the actions of the employees of the landlord, as they stare at the tenants when in their backyard and come onto the rental premises. In explanation, the employees are on the adjacent sanctuary land, driveway and a structure the tenants referred to as the garage and have harassed the tenants, according to the tenants. The tenant did admit that he has erected a fence in their backyard to protect their privacy.

As part of their request for monetary compensation, the female tenant contended that she has lost time from work due to the stress of the harassment of the sanctuary employees and staff, and that she should be compensated for lost wages.

Additionally the tenants have requested compensation of \$100 per month for the loss of use of the garage, the use of which was withdrawn without notice.

As to the tenants' request for repairs, the tenants are asking that the landlord install a heater and electrical outlet in the bathroom where there has not previously been an outlet or heater. In explanation, the tenants said they are getting older and need more heat now; additionally the tenants submitted that they have made other repairs around the property at their expense and that this was a small price for the landlord considering those repairs.

Landlord's response to the tenants' application-

The attending landlord's representative agreed that the long driveway in back of the tenants' residential premises leading to the workshop was a shared driveway, which is to be used by both Sanctuary personnel and the tenants. The landlord said that the staff member in question only briefly blocked access to the tenants' driveway and was conducting Sanctuary business.

The landlord did admit that he was unaware that the map referred to by the tenants had been posted and said that directly after the hearing, he would resolve the issue, by informing all staff and employees that the tenants had shared use of the driveway.

The landlord denied that the staff, employees, or volunteers had harassed the tenants or invaded their privacy; instead, according to the landlord, it was quite the opposite, with the tenants acting in an abusive manner towards the said staff. The landlord contended that the tenants' behaviour in this regard led to the issuance of their 1 Month Notice to End Tenancy for Cause.

As to the tenants' request for monetary compensation, the landlord denied that there had been any additional stress caused by the landlord, leading to lost income.

As to the request for compensation for loss of use of the garage, as called by the tenants, the landlord said that the structure referred to was the Sanctuary's workshop and not the tenants' garage. The landlord said that the workshop was located on Sanctuary land, not the residential property, and was required to be used by their staff.

The landlord also pointed out that use of this workshop was not provided for in the tenancy agreement, and that the tenants already had taken over two other structures, for a pigeon coop.

The landlord did agree that the electrical panel for the workshop was located in the tenants' rental unit and that the tenants did pay for the electrical use; however the

landlord contended that the landlord has been paying for the tenants' water use and garbage collection in return, which was not the landlord's obligation under the tenancy agreement.

As to the tenants' request for an additional electrical outlet and a heater, the landlord submitted that this was in improvement to the rental unit and was not a repair and therefore the reason the landlord has turned down this request.

The landlord did say that the tenants could install such outlet and heater, upon prior approval and proper permits, at their expense.

Analysis

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

As to the tenants' request for an order directing the landlord to inform the staff, employees, and volunteers that the driveway behind the tenants' residential property was a shared driveway, I decline to make this order. The landlord said that he would immediately attend to this issue after the hearing as he agreed that the driveway was a shared driveway. I also inform the tenants that I am unable to order that their driveway never be blocked by the landlord's representatives as there may be times such as necessary if the representative is attending to landlord business. Additionally, the tenants have parking and access to the rental unit at the front of the property and I cannot find a situation when the tenants were not able to gain access to their home.

As to the tenants' request for compensation for the loss of their privacy or of their quiet enjoyment of the rental unit, I find the tenants submitted insufficient evidence that their privacy has been compromised or that they have been harassed, given the contradictory evidence of the parties on this issue and in the absence of any corroborating evidence from the tenants (who bear the onus of proof).

I find the tenants' complaint that the Sanctuary's employees are "staring" at the tenants to lack enforceability under the Act. Additionally, I cannot conclude that the tenants' issue has not been resolved by the tenants as they have erected a fence without prior permission from the landlord.

As to the tenants' claim for loss of income, I find the tenants submitted insufficient evidence that this has been the case. The tenants' documentary evidence from her employer and physician is in the form of a narrative which clearly recites information received from the tenant, not proof of any of the allegations contained therein.

I also find the tenants submitted insufficient evidence of loss of income attributable to landlord fault as I have previously found that the tenants failed to demonstrate harassment on the landlord's part.

As to the tenants' request for compensation for loss of use of the garage/workshop, I find the tenants were not provided use of this structure in their tenancy agreement, and even though over the course of the tenancy the tenants may have used the structure, I find the tenants are not entitled to compensation for loss of use of a building not provided for in their tenancy agreement. On the other hand, although apparently the arrangement of the tenants providing for electricity to the workshop and the landlords paying for garbage and water use to the rental unit has in the past worked to the mutual satisfaction of the parties, this is not the case at present. As such, I find that the tenants are not responsible for paying for the electrical use of the workshop and, pursuant to section 62 of the Act, I order the landlord take immediate steps to have the workshop re-wired so that the tenants are not paying for such electrical use in the workshop.

By the next logical step, the tenants would also be held responsible for their own water use and garbage collection.

I also allow the parties to reach a mutual agreement that the tenants would resume having shared use of the workshop in lieu of not re-wiring the electrical panel, and the landlord agreeing to continue paying for the water and garbage use.

I remind the parties, however, that any agreement should be reduced to written form and be mindful of the fact that should the tenants and Sanctuary personnel use the same facility, future claims by the landlord and tenants as contained in this application and in the landlord's Notice may again arise.

As to the tenants' request that the landlord be ordered to install an electrical outlet and a heater, Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

I find the tenants' request to be an improvement to the property and therefore is not a request to repair. I have no evidence before me that the property is not being maintained as required, given the age, character and location of the rental unit.

I therefore dismiss their request to require the landlord to install an additional outlet and heater to the bathroom.

As to the tenants' request for a reduction in their future monthly rent, as I have found no violation of the Act by the landlord, I dismiss such request for a reduction in rent.

Due to the above reasoning, I find the tenants have submitted insufficient evidence to support their application for orders for the landlord, monetary compensation, and a reduction in rent.

As I have dismissed the tenants' application, I decline to award them recovery of their filing fee.

Conclusion

The tenants' application for dispute resolution has been dismissed due to lack of sufficient evidence.

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* and is being mailed to both the applicant and the respondent.

Dated: June 17, 2013

Residential Tenancy Branch