



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OLC, MNDC, RP, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to comply with the Act, an order to force the landlord to complete repairs, an order to suspend or set conditions on the landlord's right to enter and monetary compensation.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matters:

Respondent's Name of Application

The tenant's application had named an individual as the respondent landlord. This respondent attended and stated that the tenant had submitted an incorrect first name for the landlord.

Given the above, it was determined that the first name of the landlord should be amended and replaced with the correct name.

Tenant's Claim for Damages

In regard to the tenant's unspecified monetary claim, I find the primary issue before me is the tenant's request for an order to force the landlord to comply with the Act and the tenant's request to suspend the landlord's right to enter the unit.

I find that including a monetary claim for damages under section 67 of the Act is not sufficiently related to the other portion of the application.

The Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the tenant's monetary claim pertains to a separate and distinct section of the Act not sufficiently connected to the remainder of the application.

Accordingly, I find that the portion of the tenant's application related to the claim for damages, must be severed from the application before me and should be dealt with through a separate application submitted under section 67 of the Act.

Therefore I hereby dismiss the tenant's request for compensation for damages with leave to reapply.

The hearing will proceed in determining whether the tenant is entitled to an order to force the landlord to comply with the Act and the tenant's request to suspend the landlord's right to enter the unit.

Service of Landlord's Evidence

An evidence package was submitted to Residential Tenancy Branch by the landlord but the tenant stated she did not receive this evidence.

The landlord testified that the evidence was served on the tenant, who refused to accept it and then immediately returned the evidence package to the landlord.

The tenant acknowledged that she refused to accept the evidence package on the basis that there was no signature on the material.

Rule 4 of the *Residential Tenancy Rules of Procedure* states that, any evidence upon which a respondent intends to rely in disputing an Application for Dispute Resolution, must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

Section 88 of the Act states that all documents, other than those referred to in section 89 [*special rules for certain documents*], are to be given to or served on a person in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Given the above, I find that the respondent landlord's evidence was properly served on the tenant under the Act despite the tenant's refusal to accept the evidence. Therefore, this evidence will be considered.

Issue(s) to be Decided

- Is the tenant entitled to an order to force the landlord to comply with the Act and restrict the landlord's access?

Background and Evidence

The burden of proof is on the tenant to establish that the landlord is in violation of the Act and that the landlord should be ordered to take action to comply with the Act.

The tenancy began on July 31, 2013 and rent is \$575.00. The tenant testified that the landlord installed cameras in hallways and common areas that the tenant finds oppressive, invasive and unnecessary. The tenant pointed out that one camera is aimed towards her door and is a violation of the tenant's right to reasonable privacy.

The landlord argued that the cameras are used in common areas for security reasons and are considered to be a desirable feature of the complex. The landlord testified that these cameras have been in place for nine years to deter crime and have remained in place without any complaints from residents. According to the landlord, the cameras were already there when the tenant moved in and she was aware of this fact prior to accepting the tenancy. The landlord denied that any camera is focused specifically on the tenant's door. The landlord also pointed out that the cameras are not monitored, but the footage may be viewed after an incident occurs. The landlord testified that

The tenant stated that she is seeking to restrict the landlord from entering the suite because the landlord has showed up at her door unannounced. The tenant alleged that the landlord has been rude and accusatory.

The landlord testified that they have knocked on the tenant's door on a couple of occasions, not to request entry, but merely to give the tenant information or ask for the tenant's preference with respect to certain repair issues. However, the landlord acknowledged that, as an alternative, they could contact the tenant by phone and, if they need to gain entry, would give the tenant a 24-hour Notice in writing.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In regard to the tenant's allegation that the landlord deprived the tenant of the right to reasonable privacy in violation of the Act, I find that the tenant's privacy within the interior of the tenant's suite is not at issue.

With respect to the tenant's position that the tenant's right to privacy in the common areas has been compromised by cameras, I find that any landlord is at liberty to monitor common areas in a manner that does not impose a tangible impediment on the resident's activities nor physically disrupt their quiet enjoyment of the space. I find that the intrusion caused by the existence of security cameras is not unreasonable under the

Act. Given the evidence, I do not find that the landlord has committed any violation of the Act and therefore the tenant is not entitled to an order to force the landlord to comply with the Act.

In regard to the second issue of concern by the tenant, that the landlord shows up without advance notice and knocks on the door, I find that this matter is resolved by the landlord's willingness to communicate by telephone or in writing in future.

Therefore, I find that the tenant is not entitled to an order restricting or setting conditions, beyond those already contained in the Act, with respect to the landlord's right to access the suite.

Given the above, I find that the tenant's application has no merit and must be dismissed, and I do so without leave to reapply.

Conclusion

The tenant is not successful in the application to force the landlord to comply with the Act and the application is dismissed without leave. The portion of the tenant's application seeking compensation is severed and dismissed with leave.

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 26, 2014

Residential Tenancy Branch

