



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, OLC

Introduction

This is an application for a monetary order for \$1700.00 and a request for an order for the landlord to comply with the Residential Tenancy Act.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the landlord failed to comply with the Residential Tenancy Act?

Is the tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

In her testimony and written submissions the applicant/tenant has alleged that the landlord, since losing a previous arbitration hearing, has undertaken a campaign of ongoing harassment towards her, which includes numerous frivolous complaints with regards to such things as where she parks, drying her clothes, making too much noise cutting garlic or going down stairs, and parking her bike on the balcony where she has always parked it.

The applicant has also alleged that the landlord has failed to intervene and stop the other tenant of the rental property from harassing her.

The applicant/tenant has also complained that the landlord fails to take her concerns over the security of the outdoor lock to the common area seriously, ignoring her numerous requests to ensure that the other tenant keeps that exterior door locked at all times.

In the landlord's written submissions and testimony she has denied an ongoing campaign of harassment towards the tenant, and claims that any contact with the tenant has been over reasonable issues of concern to herself, the other tenant, or the neighbours.

The landlord also believes that the tenant's complaints about the security of the common entry area are unreasonable, as the tenant has a locking door to her own suite, and the other tenant ensures that the door to the common area is locked at night.

The landlord further argued that she has never given the tenant permission to park her bike on the other tenant's balcony, that permission was given by a previous tenant and since the present tenant does not want the bike parked on her balcony, she does not believe that is an unreasonable request to ask the tenant to remove her bike and keep it in the locked storage shed that is provided.

Analysis

After reading the extensive written submissions from both sides, and after reviewing the testimony from both sides, it's my finding that the applicant/tenant has not met the burden of proving that the landlord has undertaken an ongoing campaign of harassment towards her ever since the previous arbitration.

For the majority of the applicant/tenant's complaints of harassment, it is a "he said she said" situation, where the information provided by one side is as equally persuasive as information provided by the other. This goes for the claim of harassment by the other tenant as well, as again, after reviewing the statement of the other tenant it is not clear who, if either of the tenants, is in the wrong.

There are two issues, however which I find that the landlord has a responsibility to correct.

First of all, when there is a common entrance to the rental property, the landlord has a responsibility to ensure that common entrance is secure at all times, even if the tenants have locking doors on their personal suites.

In this case, the landlord did not believe it was necessary and believes it was an unreasonable concern for the tenant to be requesting that that common door remained secured, however it is my finding that it is not unreasonable.

Section 28 states: **28** 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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

28(a), (b), & (d), all apply here because, should a stranger access the common area, it could interfere with the tenants privacy, the tenant's right to freedom from unreasonable disturbance, and could significantly interfered with the tenants use of common area.

Therefore I have issued an order for the landlord to ensure that an automatic locking mechanism is put on that door, and that both tenants be given keys so they are able to access the common area.

The second issue is the issue of the bicycle. It is my finding that, since the beginning of the tenancy, the tenant has been given the use of the balcony area to lock up her bicycle, and the landlord does not have the right to now withdraw that facility simply because a new tenant has moved into the rental property. It was incumbent upon the landlord to inform the new tenant that the existing tenant had the right to store her bicycle on that balcony, and that the new tenant did not have exclusive use of that balcony.

Although, as stated above, I find that the landlord has been unreasonable with regards to the common door and the bicycle, I'm not convinced that the tenant has suffered a

significant loss of quiet enjoyment of the rental property, and therefore I will not be issuing any award for compensation for loss of quiet enjoyment.

Conclusion

The monetary portion of this claim is dismissed without leave to reapply.

I have issued an Order for the landlord to install an automatic locking mechanism on the exterior door to the common area. The applicant/tenant must serve a copy of the Order on the landlord.

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: December 01, 2014

Residential Tenancy Branch

