



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUSTEVILLE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, O

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to suspend or set conditions on the Landlord’s right to enter the rental suite. The Tenant also applied for ‘Other’ issues namely, monetary compensation from the Landlord.

An agent for the company named on the Application, the Resident Manager named on the Application, and the Property Manager appeared for the hearing. The Tenant appeared for the hearing with his son who acted as the Tenant’s advocate. All parties testifying provided evidence under affirmation. The parties also provided documentary evidence prior to the hearing.

No issues were raised by the parties in relation to the service of documents and the parties’ documentary evidence under the *Residential Tenancy Act* (the “Act”) and the Rules of Procedure.

The parties were informed of the hearing process and no questions were asked. The parties were also given a full opportunity to present their evidence, make submissions to me, and to cross examine the other parties on the evidence provided.

Issue(s) to be Decided

- Should the Landlord’s access to the Tenant’s rental unit be prohibited?
- Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties agreed that this tenancy for a rental unit in a residential complex started on July 9, 2011 on a fixed term basis after which it continued on a month to month basis. A

written tenancy agreement was completed and the Tenant paid the Landlord a security deposit in the amount of \$725.00 at the start of the tenancy. Currently, rent is payable by the Tenant to the Landlord in the amount of \$1,535.00 on the first day of each month.

The Tenant's advocate testified that recently the Resident Manager of the building had treated the Tenant and his family unfairly and inappropriately. The Tenant's advocate submitted several times throughout the hearing that the Resident Manager had been violent, unfair, intimidating, aggressive, loud and discriminatory against them. In addition, the Tenant's advocate testified that the Resident Manager had talked to him over the phone in a disrespectful manner and that the Tenant and his family felt threatened by him.

As a result, the Tenant seeks to set limits on the Resident Manager's contact with the Tenant and his family as well as monetary compensation from the Landlord for the way they have been treated by the Resident Manager over the last six months. The Tenant also states that the Resident Manager has violated his human rights.

The Tenant's advocate was asked to provide specific examples of these allegations made against the Resident Manager. The Tenant then testified and explained that when he has issues with his rental suite, such as repairs, the Resident Manager appears at his door and thumps it several times instead of knocking it.

The Tenant went on to explain that they had an issue of noise coming from the mechanical rooms in their building which they had reported several times to management. Each time, when the Resident Manager came to investigate the issue he would speak to the Tenant and his family in a very aggressive manner. When the Tenant and his son asked him to look into the matter further, he became more agitated only to discover that there was an actual noise problem which was then subsequently rectified.

The Tenant spoke at length about an incident where his daughter was unable to get out of the parking lot because the Tenant had mistakenly failed to give her a garage fob. When the Tenant called the Resident Manager about the problem, the Resident Manager reacted angrily towards the Tenant. The Tenant testified that after this, the Resident Manager attended his rental suite where he continued to chastise the Tenant's daughter and threatened to have the car towed away when it was legally parked in his garage parking space.

The Tenant and his advocate also spoke at length about an incident in which the Resident Manager had deactivated the Tenant's family's garage fobs because their

visas were about to expire. The Tenant submitted that this was evidence that the Resident Manager was demonstrating racist and discriminatory behaviour towards them.

The Tenant provided 50 pages of e-mail evidence to support his case. The Tenant was asked to guide me to pages which proved his allegations against the Resident Manager. The Tenant's advocate explained that the e-mail communication showed that they had reported the issues with their tenancy and with the Resident Manager to the Landlord's agent and the Property Manager.

However, the Tenant was unable to show me evidence of communication with the Resident Manager that proved the allegations being made against him. In addition, the e-mail evidence package provided to me was not consistent to the one being referred to by the parties.

The Landlord's agent and the Resident Manager disputed the Tenant's testimony and submitted that the Tenant's claims were very serious and denied them all. The Landlord's agent submits that the Tenant has a personal vendetta against the Resident Manager.

The Landlord's agent explained that it was only after the incident of the Tenant's access fobs being deactivated, did the relationship between the Tenant and the Resident Manager deteriorate. This resulted in a number of subsequent negative interactions between them and deterioration in their relationship.

The Landlord's agent submitted that these interactions were a clash of personalities and denies that the Resident Manager has acted violently, aggressively or in any discriminatory way towards the Tenant or his family. The Landlord's agent submitted that the Tenant feels that the Resident Manager is displaying this behaviour because the Resident Manager deactivated their fobs.

The Landlord's agent explained that the previous Resident Manager had not enforced the building rules and tenancy agreements with regards to additional occupants. When the Resident Manager was employed he became aware that the Tenant had family members residing in the rental suite without permission which is required by Section 13 of the written tenancy agreement.

As a result, the Resident Manager requested the Tenant to complete the necessary screening paperwork to approve the family to live in the rental suite and add them to the lease. However, the paperwork was not initially approved because of confusion due to a

clerical error in the expiration of the family members' visa dates but it was eventually approved.

The Landlord's agent submits that because of this delay and confusion, the Tenant blames the Resident Manager as the source of this delay; however, the Resident Manager had no input in assessing an application for tenancy into the building but only to request it.

The Landlord's agent explained that the Resident Manager has a good standing with management and has no complaints from other residents. The Landlord's agent took issue with the Tenant's inflammatory allegations that he was "mean, disrespectful, discriminating, sarcastic, disrespectful and unprofessional".

The Landlord's agent explained that the Resident Manager performs his job very well with professionalism and that any complaints made by the Tenant regarding repairs had been dealt with in accordance with the Act as shown in the Tenant's e-mail evidence. This was further supported by a hearing that took place on December 1, 2014 where the Tenant had requested the Landlord to do repairs. During this previous hearing the Tenant was satisfied regarding the Landlord's repair relating to a noise disturbance coming from the building and the case was subsequently dismissed.

The Resident Manager testified that he did not target the Tenant or his family and denied the accusations being made against him as well as thumping on the Tenant's door.

The Landlord's agent also submitted that there was no evidence provided by the Tenant and his advocate of the allegations they had put forward and that this is simply a personality clash. The Landlord submitted that he was concerned about this tenancy continuing successfully with the tensions between the parties; he explained that he has already asked the Resident Manager to limit his interaction with the Tenant as much as is practicably possible and to have a witness with him at all times when he does need to interact with the Tenant.

The Landlord's agent also submitted that the Tenant has a healthy relationship with the Property Manager, as evidenced by the Tenant's e-mail evidence, and communication will be channeled between these parties instead as much as is possible.

The Tenant's advocate rebutted stating that while the Resident Manager may be in good standing with other residents, this is further evidence that he is targeting only the Tenant and that this is discriminatory.

Analysis

When a party makes an Application against the other, the applicant bears the burden of proof on the balance of probabilities, to prove their claim. If a party's evidence is disputed by the other party, then the party making the claim must be able to corroborate or support their evidence by other means that would give merit to their claim.

When the only evidence a party relies upon consists of oral testimony provided during a hearing and this is disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As explained to the Tenant during the hearing, this does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural and fair justice, a party's **disputed and unsubstantiated testimony alone** is not sufficient in this case to support a decision in favour of the applicant.

In this case, I find that the evidence of both parties certainly supports a case that the relationship between the Resident Manager and the Tenant has become strained. However, I find that the Tenant has failed to provide sufficient evidence that the Resident Manager has acted towards the Tenant in a violent, aggressive, intimidating, rude, discriminatory or racist way. I find that for such serious allegations to be made against another party this requires proof that goes beyond disputed oral testimony.

While the Tenant provided sufficient evidence that he has brought to the attention of the Landlord a number of complaints about the Resident Manager, I find that these complaints are unproven and unsubstantiated.

I accept the Landlord's version of the events in relation to the screening of the Tenant's family's application for tenancy and I find that the Landlord had a right to request this under section 13 of the signed tenancy agreement; this provides that the Landlord's written permission is required for additional persons to occupy the rental suite. Therefore, I find that this is not sufficient evidence that the Resident Manager targeted the Tenant.

The Tenant failed to provide convincing corroborative or supporting evidence of the alleged Resident Manager's actions, such as video, audio, photographic or neutral third party witness evidence.

Furthermore, I do not accept the Tenant's advocate's submission that the existence of non-complaints from other residents shows that they are being specifically targeted. Instead, I find that this evidence supports, on the balance of probabilities in this case, that the Resident Manager conducts his duties of employment in a professional manner.

In relation to the incidents testified to by the Tenant and his advocate, I find that the Landlord has provided sufficient rebuttal evidence to refute the Tenant's claim. Therefore, I find that the Tenant's evidence is no more compelling than the Landlords' evidence.

As a result, I am unable to set any conditions or suspend the Resident Manager's rights under this tenancy. I also find that the insufficiency of the Tenant's evidence causes me to dismiss the Tenant's application for monetary relief.

The Tenant is also cautioned that the Act does not have any authority or jurisdiction over the Human Rights Code. Based on this decision, I encourage the parties to work together to bring harmony to this tenancy.

Conclusion

For the reasons above, I dismiss the Tenant's Application **without** leave to re-apply.

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: January 12, 2015

Residential Tenancy Branch

