



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an other order pursuant to the *Act* that the landlord provide an emergency contact name and number; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I waited until 11:21 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenants both attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Tenant KM testified that she served the Application for Dispute Resolution to the landlord by registered mail on February 13, 2015. She provided a tracking number with respect to this mailing. She further testified that she had checked the tracking number with Canada Post and confirmed that the package had been delivered. Based on the evidence provided and pursuant to section 89 and 90 of the *Act*, I find the landlord deemed served with the tenants' Application for Dispute Resolution package on February 18, 2015, 5 days after its mailing.

Issues to be Decided

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to another remedy under the *Act*, specifically to obtain the name and phone number of an emergency contact person from the landlord?

Are the tenants entitled to recovery of the filing fee for this application?

Background and Evidence

Tenant CC testified that the tenancy began on February 1, 2012. The rental amount is \$1250.00 payable on the first of each month with the landlord holding a security deposit of \$625.00. The tenants submitted a copy of the residential tenancy agreement.

The tenants also submitted a copy of a previous decision with respect to this tenancy. In that November 6, 2014 decision, the tenants applied for an Order for the landlord to comply with the *Act* pursuant to section 62. In that decision, the arbitrator found that the driveway was a restricted service and ordered that the landlord provide exclusive possession of the driveway to the Tenant immediately. Tenant CC testified that, at another recent dispute resolution between these parties, an arbitrator orally ordered that the landlord require that a truck belonging to other tenants on the premises be removed from the driveway.

Despite the November 6, 2014 order of the arbitrator, both tenants testified that they have limited access to their driveway and do not have exclusive possession. They both testified that, since that decision, the landlord has provided a notice to end tenancy that was cancelled at hearing and that he has told them he wants them out, having no intention to ask the other tenant to move his truck. Tenant KM testified that the truck in the driveway is uninsured. Tenant CC testified that the truck is extremely large: 18.5 feet by 10 feet in size. The tenants testified that they continue to have limited space on the driveway to park. Tenant CC testified that it is not possible to get in and out of their cars properly. They also testified that they cannot open their trunks. Tenant CC testified that the driveway is also the walking or through path into their rental unit. She testified that there is no space to walk or move through to their rental unit without great difficulty and inconvenience.

The tenants both testified that the landlord has advised each of them that he does not want to speak to them. They both advised that their calls to the landlord are now unreturned. Tenant CC expressed concern that, if they require emergency repairs or assistance, they will not have anyone to call. They request an order that the landlord provide an emergency contact name and number.

Analysis

Section 7 of the *Act* provides consequences and liability for not complying with this *Act* or a tenancy agreement. It provides that;

- 7 (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The tenants have shown, with both of their testimony and the evidence submitted for this hearing, that the landlord is not in compliance with their tenancy agreement and not in compliance with an order of the Director. I accept the sworn, undisputed evidence before me that the landlord has failed to act as requested by the tenants and required by the Director under section 62(3). The arbitrator in the previous matter suggested in the written decision that compensation may be appropriate if the landlord refuses to act.

Under section 27(1) of the *Act*, a landlord may terminate or restrict a service or facility if he also reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. An arbitrator has found that the driveway is a facility that has been restricted. I find the tenants are entitled to a rent reduction that compensates them for this lack of facility that is a part of their tenancy.

I find that the tenants are entitled to a rent reduction for their loss of exclusive use of the driveway. If the landlord does not ensure the tenants are given exclusive use of the driveway by April 1, 2015, I order the tenants to reduce their rent by \$100.00 per month. If the tenants are not given exclusive use of the driveway by September 1, 2015, I order the tenants to reduce their rent by a further \$50.00 per month. If the tenants still do not receive exclusive use of the driveway by March 1, 2016, I order the tenants are entitled to reduce their rent a further \$50.00 per month. I order that the tenants continue to reduce their rent a further \$50.00 every six months until the landlord provides them with exclusive use of the driveway. The reduction in rent will cease and the monthly rent will return to the legal amount established under the residential tenancy agreement in the month following the landlord providing exclusive use of the driveway to the tenants.

With respect to the tenants' request for an emergency name and telephone number, section 13 of the *Residential Tenancy Act* sets out the requirements for a tenancy agreement. Section 13(2)(a) provides that an address for service and a telephone number of the landlord or landlord's agent is required as part of the tenancy agreement. The tenants have contact information for the landlord however their sworn and undisputed testimony is that he will no longer contact them or return their calls.

Section 33(2) of the *Act* requires that a landlord must provide, in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. Given the circumstances

described by the tenants, including their concerns for an emergency situation and the lack of contact information provided and given the requirements under the *Act* that tenants be provided contact information, I find the tenants are entitled to an order requiring the landlord to provide a name and telephone number of a person to contact for emergency repairs.

As the tenants were successful in their application, I find they are entitled to recover the \$50.00 filing fee for this application.

Conclusion

I order the landlord to provide the tenants with a name and telephone number of a person to contact for emergency repairs.

As of April 1, 2015, I order that the tenants reduce their rent by \$100 per month until September 1, 2015 or until the landlord provides them with exclusive use of the driveway. After September 1, 2015, I order that the tenants continue to reduce their rent a further \$50.00 every six months until the landlord provides them with exclusive use of the driveway. I order that all rent reductions will end in the month after the tenants are given exclusive use of the driveway.

I order the tenants to reduce April 2015 rent by a further \$50.00 to recover their filing fee for this 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: March 16, 2015

Residential Tenancy Branch

