



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 23, 2014, to obtain an Order to have the Landlord comply with the Residential Tenancy Act (the Act), regulations or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Tenant and the female Landlord. The Landlord testified that she would be representing both Landlords in this matter. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa. Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenant. No documentary evidence was submitted by the Landlords.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Was the provision of storage a material term of the tenancy agreement?
2. If not, was storage provided as a service or facility included in rent?
3. Should the Landlords be ordered to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The undisputed evidence was that the Tenant entered into a month to month tenancy agreement with the previous owner, which began on August 1, 2014. Rent of \$950.00 is due on or before the first of each month and on July 22, 2014 the Tenant paid \$475.00

as the security deposit. The rental unit was described as being in a single detached house that had an attached single garage. The Tenant rents upper level and the basement is a separate self-contained basement suite rented under a separate tenancy agreement to other tenants.

The Tenant testified that when she entered into the tenancy agreement with the previous owner, she negotiated access to long term storage located in the attached garage, as listed in item 2 on the tenancy addendum that was provided in her documentary evidence. She noted that storage was such a significant issue for her when agreeing to rent this unit that the previous owner entered into an additional three page storage agreement to supplement the tenancy agreement and addendum; which was also submitted in the Tenant's documentary evidence.

The Tenant submitted that she shared the garage storage space with the previous owner and each time she needed access he would provide her with the key. When the property was sold the Tenant was the only one who had storage inside the garage. The garage is accessed from a door inside her rental unit that is locked from the inside of the garage. The Tenant stated that she cannot access the garage unless she has the key to unlock the door from inside her rental unit.

The Tenant asserted that after the building inspection was conducted for the new owners, she was advised by the male Landlord that they were told she had to be given the key as permanent access to the garage; because it was the secondary exit or egress from her rental unit. The Landlord delayed in giving her the key so she continued to request it and in approximately early January 2015, the Landlords gave her the key and the remote control for access to the garage.

The Tenant stated that during her requests to the new owners to have the key to the garage the Landlords discussed allowing the downstairs tenants having access to the garage for their storage. The Tenant said she refused that request because if those tenants had access to the garage they would have access to her rental unit and her storage items which would mean she would have no security. A few weeks later, on January 23, 2015, The Tenant stated that she was served a written letter that said the Landlords were cancelling her storage. A copy of that letter was provided in her evidence. The Tenant now seeks an Order to keep her secured storage and to not allow the other tenants access to her storage.

The Landlord testified that they purchased the property on December 23, 2014, and that all the Tenant's tenancy forms were completed with the previous owner, not them. The Landlord submitted that they only received copies of the tenancy agreement with their purchase documents and did not get a copy of the addendum or the storage agreement.

The Landlord argued that because they do not need to store things in the rental unit garage, and because the Tenant used to share the storage space with the previous owner, they thought they would offer the downstairs tenants the opportunity to put their

storage in the garage. She submitted that the downstairs tenants currently have off sight storage so they thought they could share the space between all the tenants.

The Landlord argued that they had wanted to terminate the Tenant's storage agreement and make a shared storage agreement between the upper and lower tenants, with the key access held by the Landlords. When the Tenant initially refused they offered the an arrangement where the Tenant would hold the key access but she refused that suggestion as well, so they issued a notice to terminate the storage.

Upon review of the tenancy agreement the Landlord argued that section 3(b) does not indicate that storage was included so without a copy of the addendum or the storage agreement they did not know that storage was part of the Tenant's tenancy agreement. It was undisputed that the Tenant provided the Landlords with copies of her tenancy addendum and the storage agreement when the issue of storage was first raised by the Landlords.

The Tenant submitted that after filing her application for dispute resolution the Landlords issued her a 2 Month eviction Notice. I explained to the parties that this hearing was not convened or amended to hear matters pertaining to an eviction notice. Therefore, if the Tenant wished to dispute that 2 Month Notice, she would be required to file another application for dispute resolution.

In support of her application, the Tenant submitted documentary evidence which included, among other things, copies of: the tenancy agreement; tenancy addendum; storage agreement; 4 photographs; a written statement, and two medical notes.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Case law provides that obligations of a tenancy agreement pass with the transfer or assignment of the land. Section 93 of the Act stipulates that obligations of a landlord under this Act with respect to a security deposit or a pet damage depso8it run with the land or reversion.

Section 12 of the Act stipulates tenancy agreements include standard terms which are the terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Section 14 Of the Act provides which terms may or may not be amended or changed as follows:

- (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.
- (3) The requirement for agreement under subsection (2) does not apply to any of the following:
 - (a) a rent increase in accordance with Part 3 of this Act;
 - (b) **a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities];** [My emphasis of bolding added]
 - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

A service or facility is defined under section 1(g) of the Act to include storage facilities which are provided or agreed to be provided by the landlord to the tenant as indicated on the tenancy agreement.

As submitted by the Landlord, section 3 b) of the Tenant's tenancy agreement did not indicate that storage was included in the Tenant's rent.

Section 3 b) of the tenancy agreement stipulates as follows:

*What is Included in the rent: (Check only those that are included and provide additional information, if needed.) The landlord **must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.*** [My emphasis added by bolding].

Case law provides that a material term is a term written into the tenancy agreement that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

In addition to the above, and notwithstanding the Landlord's submission that they had only been provided a copy of the tenancy agreement with the purchase documents, I note that tenancy agreement (page 6 at 17c) listed that there was an addendum to the tenancy which included 1 page listing 6 additional terms. Therefore, the Landlords ought to have known there were additional terms to the tenancy agreement.

Based on the above, I find the Tenant's storage in the attached garage is a material term of her tenancy agreement; and therefore, cannot be terminated or restricted by the current Landlords. I make this finding in part due to the fact that the storage

arrangement was written into the tenancy addendum and was not listed in section 3 b) of the tenancy agreement. The tenancy addendum was created by the former owner, on July 9, 2014, and included five other material terms. Furthermore, I find that the storage was such a significant issue to the Tenant's tenancy that the parties entered into a separate storage agreement on September 25, 2014, prior to the property being sold.

Furthermore, it would be unconscionable to allow other tenants to have access to the garage, where the Tenant's possessions are stored and where they could gain access to the Tenant's home. Accordingly, I grant the Tenant's application and order the Landlords to comply with the material terms of the tenancy agreement.

Conclusion

I HEREBY ORDER the Landlords to comply with the terms of the Tenant's tenancy agreement which was signed by the Tenant on July 17, 2014, pursuant to section 62 of the Act.

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 25, 2015

Residential Tenancy Branch

