



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, O, FF

Introduction

The hearing dealt with two related applications. One was the landlord's application for payment of parking fee and declarations regarding a dog, the tenant's yard space, and damage to notices posted by the landlord. The other was the tenant's application for compensation for damage to property; compensation for repairs, services or facilities agreed upon but not provided; and repairs. Both parties appeared.

At the beginning of the hearing the tenant was violently ill. I offered her an adjournment but after a few minutes the tenant said she was well enough to proceed with the hearing and she wanted to do so. The tenant was able to participate fully in the hearing without any apparent difficulty and both parties presented all of their evidence.

The landlord acknowledged receipt of the landlord's evidence. The tenant had submitted 18 photographs. When the landlord said he had only received two, the tenant replied that she had thought she had served all the photographs on the landlord but she was not sure if she had provided colour copies. Because the tenant could not state definitively that she had served all of the photographs on the landlord they have not been considered in the preparation of this decision.

The landlord was advised that a previous decision held that the tenant was not required to pay for parking; I was *res judicata* on this issue; and the issue would not be considered in this hearing.

Issue(s) to be Decided

Are either the landlord or the tenant entitled to any of the orders or declarations they seek and, if so, on what terms?

Background and Evidence

This tenancy commenced August 1, 2012. The monthly rent of \$735.00 is due on the first day of the month. There is a written tenancy agreement but neither party filed a full copy of it.

There have been several previous hearings between the parties.

In a decision dated December 9, 2014, the landlord was ordered to fix the leak in the exterior wall; replace the refrigerator; and replace the living room carpet. The tenant was awarded a

rent reduction of \$50.00 as compensation for being without a sink for four days and \$400.00 (\$100.00/month for September, October, November and December) for wet conditions in the renal unit.

In a decision dated January 8, 2015, a 2 Month Notice to End Tenancy for Landlord's Use was set aside; the landlord's claim for parking fees was dismissed; and the tenant's application for an order allowing her to change the locks was dismissed.

In a decision dated March 2, 2015, the tenant was awarded \$550.00 for carpet replacement; a further rent reduction of \$300.00 (\$100.00/month for January, February and March because the leaking wall had not yet been repaired; and \$150.00 (\$50.00/month for January, February and March) because the refrigerator had not been replaced. The arbitrator also ordered that future rent would be reduced by \$100.00/month until the wall was repaired and \$50.00/month until the refrigerator was replaced.

Both parties agree that the refrigerator was replaced in March.

In this application the tenant asked that:

- Three wasp nests be removed from under the overhang of the building outside her balcony door.
- The washing machines in the laundry area be cleaned.
- The fan in the kitchen be replaced. The tenant first requested this repair from the landlord on December 12, 2014. She said she did not include it in her previous applications for repairs because she overlooked it.

The landlord agreed to all of these repairs.

The tenant also asked that the doors into the parking areas be repaired. The issue is whether they provide adequate security. The landlord advised that an inspection of all doors is scheduled by the end of the month. This inspection is part of a wider security review which will include consideration of the installation of security cameras. The landlord testified that they are continually fixing the doors as they are continuously being broken.

In her application for dispute resolution the tenant accused the landlord of cutting the hose in her yard area. In the hearing the landlord vehemently denied the allegation. When testifying about the fence and gate the tenant testified that people do come into her yard area and steal things and she related an incident with some junkies the previous day.

The rental unit is a ground floor apartment. Adjacent to the apartment is a small yard area that is fenced, with a gate. The landlord asks for an order that the gate be removed so that he can access the yard to make necessary repairs. The tenant says the gate has been there since the fence was built, which was long before she moved in. The tenant says she has a chain and a lock on the gate for her own security because of the people who access the yard.

In his application for dispute resolution the landlord asks for some sort of declaration regarding a dog he says is in the rental unit. The landlord says the building has a "no dog" policy; only cats are allowed. When he posted notices advising that anyone who brings a dog into the building will be fined \$50.00 each time and anyone who keeps a dog in their apartment will be fined \$200.00, someone ripped down the notice. He accused the tenant of destroying the notice.

The tenant says the tenancy agreement is silent on the subject of pets. She does not own a dog but she occasionally babysits her ex-husband's dog.

In the hearing the landlord said he is not fighting about the dog as long as the dog does not come back.

The tenant claims compensation for lack of a storage space. She says that the tenancy agreement includes storage as one of the services or facilities included in the rent. The apartment has a storage room about four feet by four feet in size. Until now she has been using her balcony for storage but as her gardening has increased her storage needs have increased.

The tenant testified that when she rented the apartment she was not thinking about storage and did not ask about storage. She was not shown storage lockers or any storage area outside of the apartment.

Recently she asked one of the caretakers about storage and was told there was no storage outside of the rental unit available. She testified that she is only raising the issue now because she has things that need to be stored.

The wall that needs to be repaired is the concrete foundation wall. When it rains water comes through the a crack between the foundation wall and the concrete slab. The landlord has dug a ditch approximately one foot deep and two feet wide along the entire length of the rental unit. It is right down to the concrete slab. The landlord told the tenant that the advise he had received as that the concrete needs to be clean and dry before the sealant can be applied. The landlord wants to power wash the concrete before applying the sealant. He want to extend the ditch three feet into the garden. He is concerned about water accumulating in the ditch and leaving the area too wet to work on after he power washes the foundation.

The tenant has refused the landlord permission to extend the ditch as he has requested. She say that the proposed route of the ditch will affect the roots of two trees and may kill them. She suggests that the ditch be directed to the left and into the parkade. The tenant also opined that power washing was not necessary; a scrub brush and elbow grease should be sufficient. She also said she just wants the wall fixed.

The landlord has not hired a contractor to make the repair. He has decided to do the cleaning and preparation work himself because he can do it cheaper than a contractor.

Analysis

There is no evidence to support the tenant's allegation that the landlord cut her hose or the landlord's allegation that the tenant vandalized his notices. Both claims are dismissed.

There is no evidence that the tenant installed the gate, only that she has put a lock on it. Section 31 states that a tenant may not change the locks or other means of access to a common area unless the landlord consents to the change and may not change the lock or other means of access to the rental unit unless the landlord consents to the change in writing.

The tenant's explanation that the locked gate is to enhance the security of her rental unit is reasonable. The landlord's explanation that the real issue is access to the yard area for the purpose of making repairs is also reasonable. If the tenant wishes to keep a lock on the gate she must provide a key to the landlord.

The landlord indicated that he did not want to take any action regarding the dog at this hearing. The landlord is advised that before it can take any action regarding a dog at the tenant's rental unit it must be able to demonstrate that the tenancy agreement specifies that dogs are not allowed in the building.

As the landlord has agreed that the wasp nests will be removed; the washing machines will be cleaned; and the kitchen fan repaired or replaced; no order regarding these items will be made at this time. If the landlord does not follow through on its' undertakings, the tenant may file another application for dispute resolution regarding these items.

Similarly, I am satisfied that the landlord is reviewing the security measure in this complex. Once again, if the garage doors are not repaired within a reasonable period of time, the tenant may file another application for dispute resolution regarding this item.

The tenancy agreement specifies that storage is included in the rent. It also specifies that a stove and oven, dishwasher, refrigerator, carpets and window coverings are included in the rent. All of these amenities are provided inside the rental unit. There is no evidence that the tenant was shown, promised, or even inquired about storage in addition to the storage provided inside the rental unit when she agreed to rent it. Based on the evidence provided I am not satisfied that the tenancy agreement provides that storage outside of the rental unit is one of the services or facilities that was agreed upon and never provided. The tenant's claim for lack of storage is dismissed.

The parties do not disagree on the fact that the concrete must be clean and dry before the seal is applied. The real dispute is how the landlord is going to make the repair.

A landlord must keep their property in good repair; a tenant must allow the landlord access to the rental unit to do the work.

The tenant has no legal right to deny the landlord access to the yard area adjacent to her unit or to impose restrictions on what he may do for the purposes of repairing the foundation wall. If any damage results from any trenching or other work the landlord may do in the course of repairing the foundation the tenant may apply for compensation. To be successful on such an application she will have to prove that under the terms of the tenancy agreement the yard area is part of the rental unit; that the times damages were her property or, if the items damages are pre-existing trees or plants, that they comprise one of the amenities included in the tenancy agreement; and the value of the loss suffered.

Conclusion

All claims of either party have been dismissed, either in full or with leave to re-apply. As neither party was successful on their application no order with respect to the filing fee they each paid will be made.

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: June 09, 2015

Residential Tenancy Branch

