Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, AAT, FF

Introduction

The tenants apply for a rebate of rent arguing that the rental unit was not insurable and thus not occupiable because a bedroom window could not be opened. They also seek an order or determination that the rental unit includes an area referred to at hearing as a "multi-purpose room." As well, they seek an order that the landlords are not entitled to use the washer and dryer in the multi-purpose area or have general access to that area.

The written tenancy agreement shows that the lawful landlord is Mr. Y.-C. S. It is agreed that the respondent Ms. W.L. is his agent. The respondent Ms. K.M. is his former agent. It was agreed that Mr. Y.-C. S be added as a respondent to this application.

All parties but for Mr. Y.-C. S. attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

What is the area contained by the rental unit? Do the tenants share any space or facilities with the landlord? Have the tenants suffered loss as the result of a bedroom not having a window that opened?

Background and Evidence

The rental unit is the "garden level" of a large modern home. The landlord is the owner and occupies the upper two floors of the home, but is seldom there.

It is clear that the home was designed to contain a one bedroom suite on the garden level. It is a finished apartment with separate entrance, kitchen, living area, bathroom and bedroom.

From that self contained suite a lockable door leads to the remainder of the level, being the multi-purpose area, from which stairs lead up to the main floor, and a second room, termed the second bedroom. There is a lockable door to the landlord's area at the top of the stairs. The second bedroom has a closet containing the home's electrical panel, furnace and hot water heater. There is no door on the second bedroom.

The entire garden level area is finished construction, with laminate flooring, modern colours, door and wall trim.

The tenants are a man and woman with a two year old daughter and, now, a second child born in mid-May 2016. They responded to an ad on Craigslist offering a 1076 square foot, two bedroom rental unit at a monthly rent of $2000.00. The ad stated that the rental unit was in a "top quality home" and came with "updated kitchen appliances and washer and dryer."

The landlord and tenants entered into a written tenancy agreement commencing April 1, 2016 for a one year term.

The agreed upon rent was $1700.00. The tenant Ms. S. testifies that she was able to negotiate the rent down from $2000.00. The landlord's representative Ms. K.M., a friend of the landlord and who acted as his agent (for no compensation) at the time, says it was because "the layout was not perfect" and that the landlord would want to use the multi-purpose area.

The tenancy agreement is in the standard Residential Tenancy Branch form. It includes an area for the parties to designate what is and is not included in rent. Only two items are marked; an "x" beside "Dishwasher" and a check mark beside "Refrigerator."

There was no dishwasher in the unit at the start of the tenancy and the fridge was a small bar fridge. The parties agreed that the landlord would purchase a refrigerator and the tenants would buy a dishwasher for themselves. That was done.

The tenants say that is why there is a check mark beside "Refrigerator" in the tenancy agreement. It is included as part of the premises. There is an "x" beside "Dishwasher" to indicate that it is the tenants' dishwasher and is not provided by the landlord.

The tenancy agreement also contains a list of other standard items to be checked off if included in the rent. No other items have been marked as included, though the landlord's representatives acknowledge that some were included, for example: water, garbage, cable, stove and oven.

There is a crawlspace on the garden level. Access to it is gained through a half door in the multipurpose room. The tenants are storing belongings there.

Since the start of the tenancy the landlord has returned to live in the upstairs home. He has asserted a right to use the washer and dryer in the multipurpose room. He declares that the room is a common room for the use of the landlord and the tenants. He has directed that the tenants not use the crawlspace for storage.

The tenant Mr. P. has measured the floor area of the rental unit. It is 1076 square feet if the multi-purpose area is included.

Shortly after move-in, the tenants determined that the local fire code required that the second bedroom have at least two emergency exits; a door and a window. The window in the second bedroom was not of a type that can be opened. They brought this to the attention of the landlord's agent Ms. K.M.. The landlord agreed to install a window that opened. This work appears to have been completed around May 17, 2016.

The tenant Ms. T.S. testified that because the window did not open, the tenants were unable to obtain insurance required by the tenancy agreement. She stated that the insurance company she consulted "wouldn't cover the entire space" unless the window was changed to an opening window.

She says that because of the insurance issue and safety concerns, she and her family were not able to fully occupy the premises. She says that from April 1 to May 15 she and her daughter have been staying with her parents, waiting for the window repairs. She wants a rent rebate.

The respondent Ms. K.M. says the tenant and her daughter stayed with her parents because she was pregnant and needed their care and assistance.

Analysis

The Area of the Rental Unit

At the close of the hearing a partial decision was rendered orally confirming that the tenants rent the entire garden level, including the multi-purpose area.

The ad the tenants responded to offers a 1076 square foot rental unit, which would have included the multi-purpose area. The tenancy agreement prepared by the landlord does not contradict that offer or vary it.

The ad offers a “two bedroom” rental unit and the landlord’s representatives agree the tenancy agreement is for a two bedroom rental unit. It is implicit that the two bedrooms are contiguous; that one can gain access to either without having to leave the rental unit. It follows that the room between the two bedrooms would be part of the rental unit.

For these reasons I find that the rental unit that the tenant’s rented, and to which they are entitled to exclusive possession, includes the multi-purpose area.

The Washer and Dryer

Similarly, I find that the washer and dryer are for the exclusive use of the tenants.

The ad indicates that the rental unit includes a washer and dryer, not a “shared” washer and dryer or “access to” a washer and dryer.

The washer and dryer are locate in an area to which the tenants have the right to exclusive possession.

The fact that in the tenancy agreement the parties did not check off ”laundry” as being included in the rent is not determinative. The parties failed to check off other items admittedly included in the rent.

If the landlord wanted to reserve occasional use of those appliances while be was at the property, his agents should have made that clear in the tenancy agreement. In the present situation the landlord may only used those appliances with the permission of the tenants.

The Crawlspace

The matter of the crawlspace was not an item raised in the tenant's application, though raised at hearing. For that reason I make no binding decision about it, but to say that as the only access to the crawlspace is from the tenants' rental unit, it would follow that the tenants have use of that area unless the landlord had reserved if for his own use, either in the tenancy agreement or in some later agreement between the parties.

The Bedroom Window

Section 32(1)(a) of the *Residential Tenancy Act* (the "*RTA*") requires that a landlord provide and maintain a rental that complies with the health, safety and housing standards required by law.

It is the tenants' undisputed evidence that fire regulations impose a requirement that a bedroom have at least two exits in case of fire.

The landlord rented a two bedroom suite to the tenants and so each bedroom must have two exits. In this case, that means that the second bedroom required a window that was could be opened.

It's my understanding that the landlord has accepted the fact and has changed that window in the second bedroom to one that can be opened in the event of emergency.

It is understandable that the tenants would be hesitant to use the bedroom for their two year old to sleep in until it complied with safety standards. However, that did not render the premises unliveable.

It should be noted that addendum to the tenancy agreement does not require the tenants to have insurance. It states that the tenants "should" have insurance. That is a term recommending insurance, not mandating it.

The tenant Ms. S.'s evidence about insurance coverage was vague. It was not clear whether insurance for the entire rental unit was declined because of the bedroom window or simply that the insurer would not cover loss resulting from the fact that the window would not open.

The tenants did not adduce evidence from any insurance company on that point during the hearing.

I consider it unlikely that all coverage would be declined. I am unable to find that the tenant's were hindered in their use and enjoyment of the premises other than to have their daughter sleep elsewhere than the second bedroom until the window was changed.

In these circumstances I find that though the landlord failed to comply with the *RTA* by providing a bedroom that did not comply with fire regulations, the tenants have failed to show that they suffered any significant loss as a result of that failure. I dismiss that aspect of the claim.

Heat and Security System

The tenants raised the subject of heating and the security system during the hearing. As these items were not raised by the application it would be unfair to make any determination about them with the landlord having a reasonable opportunity to respond.

It should be noted however, that whether or not heating controls are contained within a rental unit, it is the landlord's responsibility to provide a mechanism to ensure that a reasonable level of heat is provided.

In regard to the security system, whether or not the landlord registers the tenants with the security company that monitors and controls the system, the tenants are entitled not to be unreasonably disturbed by the sound of an alarm controlled by others.

Conclusion

The tenant's application is allowed in part. I award them recovery of the $100.00 filing fee for this application and authorize them to reduce their next rent due by $100.00 in full satisfaction of the fee.

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 15, 2016

Residential Tenancy Branch