



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, OLC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the workshop/storage area is included in what was rented to the tenants in the tenancy agreement dated November 12, 2016.
- b. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on June 21, 2016.

Preliminary Matter:

On July 14, 2015 the tenants filed an Amendment to their Application that included a claim for a monetary order in the sum of \$8000. The claim states:

- Request for monetary for repairs; request compensation for paying
- Request compensation for heat and bills not having heat
- Request compensation for having no control over heat, no separate hydro

I determined that it was not appropriate to consider the claim set out in the Amendment for the following reasons:

- a. The Amendment does not include sufficient particulars that could identify exactly what claims are being made and how much they are making for the claims.
- b. The tenants did not file a monetary order worksheet setting a detail calculation of an monetary claim made as required by Rule 2.5 of the Rules of Procedure.
- c. The claims do not relate to the original application.

- d. The landlord objected to this claim on the basis that it is prejudicial and does not give them an opportunity to prepare.
- e. The filing of a monetary claim in the sum of \$8000 just 14 days prior to a hearing is extremely prejudicial to the other side as it denies them of a fair opportunity to properly prepare. The exchange of documents indicate the tenant was making complaining about some of these problems and the time the original Application for Dispute Resolution was filed and the tenant had an opportunity to raise them with the original Application.

As a result I ordered that the claims in the Amended Application for Dispute Resolution be dismissed with leave to re-apply.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the workshop/storage area is included in what was rented to the tenants in the tenancy agreement dated November 12, 2016.
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on November 15, 2015 when the parties entered into a fixed term tenancy agreement that was to end on November 30, 2016 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$2000 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$1000 and a pet damage deposit of \$1000 at the start of the tenancy.

The tenants seek an order that the storage area is part of the rental unit based on the following:

- The tenants have rented the downstairs portion of the rental property. The workshop/storage area is immediately beside their rental unit although there is no door that gives them direct access to the storage area from their unit.
- When they moved in the landlord gave them a set of keys for the rental unit and the storage unit.
- The tenant is an artist and the use of the storage area is essentially for his work. They would not have moved into the rental unit had the storage area not been included.

- The tenants have had the use of the storage area without any problems from the landlord until May when the landlord began demanding the payment of an additional \$400.
- The written tenancy agreement does not specifically deal with the storage area.

The landlord testified as follows:

- She gave the tenants access to the storage area as a act of good will on a temporary basis to facilitate the moving into the suite.
- The box in the tenancy agreement has not been checked (thus the written tenancy agreement indicates storage is not party of what is included in the rent).
- The landlord recently moved to Canada and is unfamiliar with tenancy agreements.
- The owner can gain access to the storage area through the garage.
- She now needs the storage area to store her own belongings.

Analysis

After carefully considering the all of the evidence I determined that the tenant's use of the workshop/storage area is part of what is included in the tenancy agreement and the landlord does not have the right to charge an additional sum. The landlord is operating a business. She provided the Tenants with a key to the workshop/storage area when they moved into the rental unit. She did not take any steps to indicate it was a short term use. The tenants have used this area for 6 months without objection. The landlord lives in the upstairs portion of the rental property and it is difficult to believe the landlord would not have been aware of the tenants' use of this space. In my view the use of the workshop/storage area has been part of what the tenants are paying for and there is no basis for the landlord to demand the tenants pay an additional sum for this..

Order:

I determined that the workshop/storage area is part of what was rented in the original tenancy agreement and that the tenants have the right continued use of that area without paying any additional sum.. As the tenants have been successful with their application I ordered that the landlord pay to the Tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: July 29, 2016

Residential Tenancy Branch