



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, LAT, RR, FF

Introduction

This hearing was convened by way of a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following reasons: to suspend or set conditions on the Landlord’s right to enter the rental unit; to authorise the Tenant to change the locks to the rental unit; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the Landlord.

At the start of the hearing, I asked the parties to identify themselves. The Tenant appeared for the hearing and provided affirmed testimony. The Landlord named on the Tenant’s Application also appeared for the hearing and confirmed that he was the current owner and that was whom the Tenant was now paying rent to. The current owner provided affirmed testimony through a translator.

A third party appeared for the Landlord and testified that he was the father of the previous owner of the rental unit and that he had nothing to do with the rental unit as it belonged to his son; however, he had appeared for this hearing because the Tenant had named him in this dispute in her evidence. The Tenant insisted that this third party was not the father of the previous owner but was the actual previous owner. I noted that the tenancy agreement signed by the Tenant was only with a property management company and neither party was able to explain why there was no appearance for property management company who was the Landlord named on that tenancy agreement.

Section 1 of the Act provides for the definition of a landlord and includes the owner of the rental unit. In this case, the current owner of the rental unit, who was the only party named as the Landlord on the Tenant’s Application, confirmed receipt of the Tenant’s Application and that he was the owner of the rental unit. Therefore, I find that this party was correctly named as the Landlord in this case.

The parties confirmed receipt of each other's documentary evidence prior to the hearing. The parties were informed of the instructions of the proceedings and no questions were raised regarding the hearing process. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence relating to the issues to be decided.

Issues to be Decided

- Is the term of the tenancy agreement requiring the Tenant to give up possession of the basement portion enforceable or unconscionable?
- If so, should the Landlord's right to enter that portion of the residential home be suspended or restricted?
- Should the Tenant be allowed to change the locks on the rental unit door?
- Is the Tenant to be provided monetary relief?

Background and Evidence

On March 2, 2016 the Tenant and the property manager for the previous owner signed a tenancy agreement for the Tenant to rent the rental unit. The rental home consists of one side of a duplex home. In that side is an upper unit and a basement portion. The Tenant explained that when she came to view the property she was not shown the basement portion of the rental home but just only the upper portion. The Tenant testified that she assumed, at the time that she was viewing it, that the basement portion was a separate self-contained unit that was going to be rented out to other renters.

The Tenant stated that she rushed into signing the agreement with the property manager because her and her children were being pushed out of another property they were renting. One of the terms of the tenancy that the Tenant signed was under section D of the agreement titled "Services, Equipment, and Facilities Excluded from Rent". This section stated that the Tenant was responsible for all utilities and the:

"Tenant has use of the basement suite until notified in writing by landlord with 2 weeks notice"

[Reproduced as written]

The Tenant initialed this provision of the agreement. The Tenant explained that the property manager informed her that then previous owner of the rental unit was intending to renovate the basement portion of the rental home; therefore, the Tenant would not be provided with any notice to move her belongings when the Landlord needed this. The

Tenant testified that as a result of this she asked the property manager for some notice period to remove her personal belongings. The Tenant explained that they agreed that she would be given two weeks' notice and this is the reason why this term appeared in the tenancy agreement. The Tenant also confirmed that the use of the basement portion of the rental home was being provided to her for storage purposes only and that this was what she used the basement for.

The Tenant testified that after she signed the tenancy agreement and obtained possession of it, she went down to see the basement portion of the rental home and saw that it was not fit for rental to other renters and was just mostly empty space. The Tenant stated that at this point she realised that the owner of the rental unit would have to do major construction to enable it to be used as a rental unit. The Tenant testified that she then learnt that the previous owner did not have the required permits to do the work. The Tenant submitted that because of this she was deceived and duped into signing the tenancy agreement to give up the basement portion after the Landlord would have provided her with the two weeks' notice.

The Tenant confirmed that upper portion of the rental home had a separate entrance and access to that of the basement portion and that the rental amount she was paying did not include the additional storage space she had access to. The Tenant argued that the term in the tenancy agreement was not legal because the Landlord had duped her into thinking that the basement portion was going to be used as a rental unit and feared that the owner of the rental unit would have unknown contractors of a shady nature coming into the rental unit causing her and her children danger and disturbance.

The Tenant testified that shortly after she took possession of the rental home, the previous owner put the rental home on the market and it sold. The Tenant asserted that the previous owner told the new owner that he could go into the basement portion of the rental unit and start work to convert the basement portion into a rental property. The Tenant testified that as a result, the current owner's contractors entered the basement portion of the rental unit and started to move her personal property that she was storing into the middle of the room. The Tenant stated that the contractors also sprayed red paint in areas where work was going to be carried out.

The Tenant stated that as she had not been provided with any notice of the entry or the two weeks' notice as required by the tenancy agreement, she called the police because an altercation occurred between the Tenant and the contractors. When the police arrived, the contractors were asked to leave and the Tenant was advised by the police to pursue the matter through this dispute resolution hearing.

The Tenant testified that on July 25, 2016 she was eventually provided with the two weeks' notice from the property manager stating that the Tenant was to remove all her property from the basement portion of the rental home effective for August 9, 2016. The Tenant confirmed that her property is still in the basement portion waiting for a decision in this matter as a result of this hearing. The Tenant states that if the current owner is allowed to move forward with the construction, this will cause a breach of her right to peaceful and quiet enjoyment as provided for by the *Residential Tenancy Act* (the "Act"). The Tenant states that her fear results from work the current owner has been doing on the other side of the duplex which has been ongoing and causing significant disturbance to her. The Tenant stated that she had provided video evidence of this on Facebook but this was not before me in the file. I also informed the Tenant that an arbitrator may not go to Facebook to look for the evidence a party relies on but rather a party has a responsibility to provide that evidence to the respondent and to the arbitrator.

The Tenant argued that the basement portion of the rental unit should not be allowed to be used by the Landlord for illegal construction work because they do not have the correct permits. The Tenant stated that if the work is allowed to be continued that her access to the rental unit will be hindered. In addition, she will have to pay increased utilities and not have full access to the garden due to contractors working there.

The current owner confirmed that he accepted rent from the Tenant for this tenancy and purchased the property on July 1, 2016. The current owner confirmed that his contractors had gone into the rental unit on July 20, 2016 without the Tenant's consent and that they did this because they thought the property manager had given the required two week notice to the Tenant as per the agreement. However, the current owner acknowledged that they had been misinformed and apologized to the Tenant for this incident.

When the third party appearing for this hearing was asked for comment, he stated that he had no part in the tenancy agreement between the property manager and the Tenant and could not comment on the agreement that was made at that time. The Tenant disputed this testimony arguing that it was the third party that insisted and requested the property manager to add this clause and forced the Tenant to sign it.

Analysis

I must first turn my mind to whether the disputed clause in the tenancy agreement is enforceable or unconscionable. In making my determination on this issue, I make the following findings. I find that the when the Tenant was shown the rental home for

viewing, the fact that she was not shown the basement portion is evidence that supports the idea that the basement portion was not intended or provided to the Tenant for living in. I find the evidence before me suggests that the Tenant was provided the basement portion simply for the purpose of storing her belongings and that was what the Tenant used it for.

I find that the section of the tenancy agreement that the property manager and the Tenant signed that is in question pertained specifically to services and facilities excluded as part of this agreement. Therefore, this suggests that the basement portion of the rental home did not form part of the rental home that was being rented. Rather, I find that the evidence points to an intention of the parties that the basement portion of the rental home was being provided as a service or facility. Under section 1 of the definitions under the Act, a service or facility includes storage. Furthermore, I find that the Tenant signed a provision of the tenancy agreement with a full understanding that the basement portion was not being provided to the Tenant as part of the tenancy but as a service or facility which could be rescinded after being provided with two weeks' notice.

The Tenant testified that her understanding at the time she initialled the clause in the tenancy agreement was that the Landlord was going to be doing renovations to convert the basement to a rental unit and that this was different to the Landlord doing major construction. However, in this respect, I disagree and I find that in any event major construction would have included or constituted renovations as the work was centered on making the basement portion fit for rental purposes.

The Tenant submitted that she was duped into signing this agreement and that it is illegal because had she known it was not a full-fledged basement suite and that it was storage area that had the ability to be converted to a rental unit which would involve work and disturbance, she would not have committed to the tenancy. However, I find the Tenant should have requested, or at the very least enquired, as to what the basement portion looked like since this was being provided to her for storage. I find that the Tenant had an opportunity to do this before she initialed the provision in the agreement and entered into it. I find that the Tenant's submission that she signed it in haste because she was being rushed out of her previous home is not sufficient evidence that she was duped or forced into signing the agreement or that the Landlord took advantage of the Tenant's alleged distress and weakness at that point she entered into the agreement. I also find that when the Tenant signed the agreement to remove her personal property from the basement portion after the required notice was given, this was not contingent upon a requirement for the Landlord to undertake a particular course of action with regard to the use of the basement, such as undertaking legal

renovations. In this respect, what the Landlord chose to do or how to use the basement portion is down to the Landlord to decide.

Based on the foregoing and on the balance of probabilities, I find that the evidence before me suggests that the intention of the parties at the time the agreement was entered into was that the basement portion of the rental unit was being provided to the Tenant for a limited time for the sole purpose of storage. I find that the term the Tenant initialled to confirm her understanding of it was not oppressive or grossly unfair to the Tenant as there is clear evidence that the basement portion of the home did not form part of the tenancy. Therefore, I am unable to conclude that the term was illegal or unconscionable. Accordingly, I find that the Tenant must remove her personal belongings from the basement portion of the rental home immediately. As a result, the Tenant's Application to change the locks or restrict the Landlord's access is denied.

In relation the Tenant's Application for a reduction in rent for services or facilities agreed upon but not provided, I find the Landlord stated that the ability to store the Tenant's personal property was for a limited time until written notice was given. I find that as the Tenant's use of the basement portion of the rental home was not reflected in the amount the Tenant was paying for rent, I am unable to award the Tenant a rent reduction for this provision of the tenancy agreement. This is because the service or facility (storage) was agreed upon and provided to the Tenant under the terms of the agreement.

However, Policy Guideline 16 titled "Compensation for Damage or Loss" states that an Arbitrator may award nominal damages where there has been no significant loss proven, but there has been an infraction of a legal right. As the current owner Landlord breached the agreement by entering the rental unit without giving proper notice and moved the Tenant's belonging and painted red spray causing her distress to the extent that she had to call police, I find the Tenant is entitled to some monetary relief to reflect this breach.

I have balanced the amount to be awarded by taking into consideration that the current owner only allowed this entry with the understanding that the two week notice had been issued and expressed remorse and regret for this one time entry. I also take into consideration that the Tenant suffered no significant financial loss for this one time entry by the Landlord's contractors. Therefore, I award the Tenant a nominal amount of \$200.00 for the illegal entry on July 20, 2016. As the Tenant has not been successful in her Application but has disclosed a breach of the Act by the current Landlord, I find the Tenant should also be entitled to half of the \$100.00 filing fee paid. Therefore, the total amount payable to the Tenant is \$250.00.

The Tenant may obtain this amount by deducting this from a future installment of rent pursuant to Section 72(2) (b) of the Act. The Tenant should attach a copy of this Decision when making the reduced rental payment to the Landlord.

During the hearing, the Tenant stated that the Landlord should be restricting any work they are conducting on the residential premises to avoid disturbance to the Tenant. The Tenant was informed that she is at liberty to apply for monetary compensation for any unreasonable disturbance the Landlord creates that restricts her right to peaceful and quiet enjoyment of the rental unit. In addition, the Tenant may also apply for monetary compensation if her access to any part of the rental unit that is being provided to her under this agreement is hindered.

The Landlord should also be cautioned that the Tenant will not be liable for utilities used by the Landlord in the course of constructing the basement portion into a rental unit and neither will the Tenant be responsible to pay utilities for any basement renters.

Conclusion

The Tenant's Application is dismissed without leave to reapply. However, the Tenant has been provided with some monetary compensation for the Landlord's entry into the basement portion while the Tenant had use of it. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 26, 2016

Residential Tenancy Branch