



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, OLC, PSF, FF

Introduction

On November 1, 2016, the Tenants submitted an Application for Dispute Resolution asking for the Landlord to comply with the *Residential Tenancy Act* (the Act), Regulation, or tenancy agreement; for authorization to change the locks to the rental unit; to suspend or set conditions on the Landlord's right to enter the rental unit; for the Landlord to provide services or facilities required by the tenancy agreement or law; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

During the Hearing the Landlord corrected the spelling of her name. The Tenants requested that their Application be amended to the correct spelling of the Landlord's name, as provided by the Landlord.

Issues to be Decided

- Are the Tenants entitled to an order requiring the Landlord to comply with the Act or regulation?
- Is the Landlord required to provide services and facilities required by the tenancy agreement?
- Should the Tenants receive authorization to change the locks?
- Should the Landlord's right to enter the rental unit be suspended or conditional?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlord?

Background and Evidence

The parties testified that the tenancy began on September 3, 2016, as a fixed term tenancy that ends on September 3, 2017. The agreement states that the Tenants must move out at the end of the fixed length of time. The parties testified that rent in the amount of \$2,800.00 is payable on the first of each month. The Tenants paid the Landlord a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00.

The Tenants are seeking clarification that the tenancy agreement they entered into falls under the *Residential Tenancy Act*. The Tenants want to know if the Landlord is bound by the Act.

The Tenants counsel C.G. submitted that the Landlord told the Tenants that she is not bound by the Act, because she rented out four bedrooms. C.G. submitted that the Landlord wants regular access into the rental unit and is restricting guests and setting visiting hours.

The Tenant K.G. testified that the Tenants do not have separate tenancy agreements with the Landlord. All the Tenants names are listed on the on a single tenancy agreement as co-tenants. The Landlord requires the monthly rent to be paid in a single payment of \$2,800.00. One of the Tenants pays the entire rent to the Landlord via bank transfer.

The Tenants testified that the Landlord came to their house to collect the security deposit and pet damage deposit from them.

The Tenants counsel submitted that the Landlord placed two advertisements regarding the rental unit and each advertisement contained information regarding the services that were being offered.

The Tenant K.G. testified that when the Tenants met with the Landlord to discuss the tenancy, the Landlord told the Tenants that two rooms would be closed off and there would be no access to the pool. K.G testified that there were not many rental options, so the Tenants agreed to the terms. K.G. testified that the terms regarding the two rooms and the pool were discussed prior to the parties signing the tenancy agreement.

The Tenants are seeking to be allowed access to the areas that were advertised but were not included in the tenancy agreement.

In response to the Tenants testimony, the Landlord stated that she does not have separate tenancy agreements with the Tenants. The Landlord submitted that the pool is broken and not useable and therefore it is not part of the tenancy agreement. The Landlord testified that the terms of the tenancy agreement were agreed to by the parties.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Residential Tenancy Policy Guideline #13 Rights and Responsibilities of Co-Tenants is a guideline that clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement. The Guideline states:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy. In the absence of clear evidence of a tenancy in common, there is a presumption in law of a joint tenancy.

Section 5 of the Act states that Landlords and Tenants may not avoid or contract out of the Act, or the Regulations. Any attempt to avoid or contract out of the Act or the Regulation is of no effect.

I find that the Tenants rented the rental unit as co-tenants and not as tenants in common. There is a single agreement that lists the names of all the Tenants who are jointly responsible for meeting the terms of the tenancy agreement.

Section 28 of the Act entitles the Tenants to quiet enjoyment of the rental unit, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

I order the Landlord to comply with section 29 of the Act with respect to the Landlord's right to enter the rental unit.

I decline issuing an order for the Tenants to change the locks; and I decline ordering a suspension of the Landlord's right to access the rental unit. However, the Landlord is cautioned that failure to comply with section 28 and 29 of the Act may result in a future claim for compensation against her, or an order suspending her right to access the rental unit.

The Tenant's request to be allowed access to the areas that were advertised but not included in the tenancy agreement is dismissed. I find that the terms and conditions of the tenancy were discussed by the Tenants and Landlord prior to signing the tenancy agreement. The rooms and use of the pool were discussed and were not included in the agreement. If the Tenants were

not satisfied with the terms of the tenancy agreement they were under no obligation to enter into the agreement. Terms and conditions of a tenancy agreement can only be changed by mutual agreement. The Tenants request for the Landlord to provide these services or facilities is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to pay the Tenants the \$100.00 fee that the Tenants paid to make application for dispute resolution. I order that the Tenants can deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenants are co-tenants and the rights and responsibilities of the *Residential Tenancy Act* apply to the Landlord and the Tenants.

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: December 20, 2016

Residential Tenancy Branch