



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement?

The hearing was conducted by teleconference on January 10, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

Preliminary Matter

Included in the evidence submitted by the Tenant was a copy of a 1 Month Notice to End Tenancy for Cause issued December 20, 2016 and served December 21, 2016.

The validity of that Notice to End Tenancy was not properly before me. The Tenant did not file an amendment to his Application for Dispute Resolution to dispute the Notice pursuant to section 47 of the *Residential Tenancy Act*, nor did the Landlord file a counterclaim for an Order of Possession pursuant to section 55. I informed the parties I would not be addressing the validity of or the reasons contained in the Notice to End Tenancy. I further informed the parties that I would only address the matters raised in the Tenant's Application for Dispute Resolution.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the parties' respective submissions and

or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement?

Background and Evidence

The Tenant testified that the tenancy began August 12, 2012. He rents a one bedroom basement suite in a home which is also occupied by the Landlord.

In the details of dispute section on his Application for Dispute Resolution the Tenant writes:

“Landlord is escalating her campaign to infringe Tenant’s right to quiet enjoyment begun on 6 October 2016 via emails and other documents. A Summary Page #0 is attached hereto referring to text it cites on Evidence Pages # 1 through # 20 (attached to the Summary), with relevant sentences highlighted on these evidence pages with arrowheads in the right margin when other sentences in them may be less relevant to this dispute. (A total of 20 sheets are attached hereto.)”

The Tenant submitted that the Landlord fails to comply with section 28 of the *Act* and consequently breaches his right to quiet enjoyment. The Tenant stated that he feels that the Landlord has made requests of him which are contrary to his tenancy agreement and which are contrary to the *Act*.

The Tenant stated that the Landlord has repeatedly requested that he re-install the closet organizer, which he stated was removed to create a home office. He notes that he should be given the opportunity to return the rental unit to its original condition at the end of the tenancy.

The Tenant further submits that he is entitled to additional storage outside of the rental unit, both in the garage and the shed, as well as the ability to park his car in the Landlord’s garage. The Tenant stated that the Landlord has insisted that the parking of his car in the garage was not included in the rent and that he is not entitled to any additional storage.

The parties provided in evidence a copy of the Residential Tenancy Agreement, signed May 16, 2016 (the "Tenancy Agreement"). Section 3 of the Tenancy Agreement provides that the Tenant has "storage" included in his rent payment; no further details are provided as to the location of this storage.

The Tenancy Agreement also includes the following Addendum.

"...3. Tenant has installed his car on jack stands in the garage, to run it monthly in place to maintain its transmission seals."

This Addendum was not signed by the parties but was referenced in the Tenancy Agreement as being one page and including three clauses.

Introduced in evidence was an email from the Landlord to the Tenant dated October 6, 2016 wherein the Landlord asks the Tenant to remove his car from the garage.

The Tenant also provided a copy of excerpts of an email from the Landlord on October 14, 2016 to the Tenant wherein the Landlord requests the following:

- remove his vehicle from the garage;
- remove items stored against the wall in the garage;
- remove stepladder from the laundry room;
- replace the window coverings;
- reinstall the closet organizer;
- remove items stored in the shed; and
- remove items stored in furnace room.

The Tenant submitted that the storage noted on the Tenancy Agreement was the area against the right wall of the garage as well as the shed and that he should not be expected to remove items from this area.

The Tenant further submitted that the demands made by the Landlord have escalated since he refused to move his car from the garage. He further stated that she was on a campaign to discredit and cause him emotional harm, including sending him the above referenced email on October 6, 2016 which was also his 75th birthday. The Tenant submitted that she has also conducted unnecessary inspections of the rental unit, has attempted to evict him and refuses to provide him a reference letter.

In written submissions provided by the Tenant he writes as follows:

“...I’ve decided to stand by the terms of my current residential tenancy agreement, Evidence Pages 13 through 19 above, and to continue storing my car in [Landlord’s] garage through 1 July 2018. Please order her to stop making the five demands listed in Paragraph 8 of that same page, and to provide me with a letter of reference matching her own sample letter, with two corrections with respect to the fact (for example: I built the deer fence *myself* during a month, except for about 20 minutes help from [Landlord’s] housemate; I didn’t *help* build it)—incorporated on Evidence Page 11.

In addition to this, please order her to restore my email service via [internet service provider], and to allow me to live here rent free February through April 2017, to balance her deliberate infringement from 6 October 2016 through 10 January 2017 of my right to quiet enjoyment—which has caused me to set aside most other work for those three months in order to deal with it.”

During the hearing the Tenant asked if I was having private conversations with the Landlord as he claimed there were times he could not hear me typing. I informed him that I was not having any such private conversations and that when I wasn’t typing I was looking at the evidence to which he directed my attention.

At times during the hearing when I asked the Tenant to respond to specific questions, he became agitated and responded that he could not hear me. It appeared as though he was able to hear me during the hearing and only claimed to have difficulty hearing me when I asked a question to which he did not wish to respond.

The Tenant was given over 70 minutes to make his submissions. At times he simply repeated what he had already said and it became apparent that he had completed his submissions and was no longer offering any new information in support of his claim. I informed the Tenant that I wished to give the Landlord an opportunity to reply to his claim, at which time he became very agitated, raised his voice and stated that I did not give him sufficient time to provide evidence. When I informed the Tenant that I had given him over an hour to make his submissions he accused me of “taking up the hearing time making soliloquies” and not letting him finish. He then threatened to report me to the Ombudsperson.

After 90 minutes of hearing time, the Landlord was affirmed to give her evidence.

In response to the Tenant’s claims regarding storage of his car in the garage, the Landlord confirmed that the one page, three paragraph addendum was part of the Tenancy Agreement. She further confirmed that she initially agreed to the Tenant

keeping his car in the garage but was subsequently informed by her insurer that as the car is not hers, and is not insured, this would affect her insurability. The Landlord further stated that she gave the Tenant the opportunity to obtain his own insurance for his vehicle so that it could stay in the garage and he declined.

The Landlord also stated that it was subsequent to the discussion about insurance that she discovered the car was leaking fluids and damaging the garage floor. The Landlord submitted in evidence photos taken December 17, 2016 showing damage to the garage floor. She stated that when she talked to him about the leaking fluid on the garage floor and asked him to clean up the mess he refused to do so. She further stated that she then purchased shop towels to put under his vehicle. She stated that when she agreed he could keep the car in the garage she did not agree that it could be there and risk her insurance and cause damage.

The Landlord stated that she had tried to work out the issue of the car with the Tenant, but he simply refused any suggestion she made. She also delivered a Notice Terminating or Restricting a Service or Facility on November 18, 2016 and November 26, 2016 regarding her request that he remove the car from the garage. Copies of those documents were provided in evidence.

The Landlord also testified that she has difficulty communicating with the Tenant as he becomes aggressive and argumentative. The Landlord stated that any time she has tried to talk to the Tenant about his items in the garage or the shed she has experienced similar "push back" as he exhibited during the hearing.

The Landlord testified that the "storage" referenced in the Agreement related to the Tenant storing his vehicle in the garage. She denied that the shed or any portion of the garage were part of the Tenancy Agreement.

The Landlord stated that after the Tenant moved in he asked for more space to put his items on a temporary basis. She stated that she agreed that he could store items for a short period of time in the garage until he could find alternate storage. She further stated that he then began storing items in the shed. She stated that she was initially unaware of the number of items he had been storing in the shed and stated that there is simply not enough space in the shed for the numerous items he collects. She further stated that she is not willing to provide more space for the Tenant to accumulate and store more things as she believes this is a problem for the Tenant.

The Landlord testified that the rental suite has been turned into something other than a "residential rental suite", as the Tenant stores bikes and tools as well as other items

which are not properly stored inside a residence. She stated that she is worried about the effect on her insurance. She stated that the closet isn't being used as an office as claimed by the Tenant, rather it has furniture piled upon furniture, a wheel chair stacked on a desk and carpets hanging from the ceiling etc. Photos of this closet confirm her testimony in this regard.

The Landlord confirmed that she has only conducted inspections once a month and with proper notification. She also stated that she is doing all she can to follow the law, but is having more and more difficulty dealing with the Tenant.

Also introduced in evidence was a letter from the Landlord to the Tenant, dated December 3, 2016 and which was sent following an inspection of the rental unit. In this letter the Landlord describes her observations of the condition of the rental unit; including, but not limited to: large boxes piled from floor to ceiling; plywood on the floors; general lack of cleaning; obstruction of the fresh air intake and heating duct outlets due to large warehouse type shelving and an excessive amounts of items stored in the unit; and, an inability to inspect the fireplace. She confirms in this letter that she intends to inspect the rental unit again on December 17, 2016. The Landlord further writes that the Tenant's vehicle is leaking fluids on the garage floor and is creating health issues due to exhaust from running it inside the garage and requests that it be moved.

At the conclusion of the hearing the Tenant again stated that I did not listen to him or give him an opportunity to fully present his case on how the Landlord breached his right to quiet enjoyment and engaged in a campaign to threaten him and cause him physical harm.

Analysis

This application came before me pursuant to section 62 of the *Residential Tenancy Act* which reads as follows:

Director's authority respecting dispute resolution proceedings

62 (1) The director has authority to determine

(a) disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

After consideration of the relevant evidence before me, and the testimony of the parties, and on a balance of probabilities, I find as follows.

The Tenant claimed the Landlord has made demands of him which are contrary to the Tenancy Agreement, specifically that he remove his car and other items from the garage and remove items from the shed.

I find the “storage” referenced in the Tenancy Agreement means the storage of the Tenant’s car in the garage. I do not accept the Tenant’s submissions that the storage contemplated other items in the garage or in the shed. Accordingly, I decline his request that I Order the Landlord to permit him to store items in the garage and in the shed.

I further find that it was an implied term of the Tenancy Agreement that the storage of the Tenant’s car in the garage would not damage the garage, or negatively affect the insurability of the Landlord’s home. I accept the Landlord’s evidence that since agreeing to allow him to store his car in the garage she has been informed that the storage of the car compromises her insurance, and is creating a health hazard. Further, I accept her testimony and the photos submitted in evidence that the car is leaking fluids which are damaging her garage floor.

I further accept the Landlord’s evidence that she has attempted to work this out with the Tenant without success. She stated that she asked that he obtain his own insurance, which he refused.

Although she issued a Notice Terminating or Restricting a Service or Facility, the Tenant refused to move his car and therefore the storage of his car was effectively not terminated or restricted.

During the hearing the Landlord confirmed she was agreeable to reducing the Tenant's rent by \$50.00 per month as compensation for the loss of use of the garage as storage for his car, but he had to agree to move his car first. The Tenant indicated no such willingness during the hearing.

Pursuant sections 62 and 65(1) of the *Act* I Order that the Tenant remove his car from the Landlord's garage, and upon removing his car, he shall be entitled to reduce his rent by the sum of \$50.00 per month as compensation for the loss of storage.

The Tenant requested that I make an Order that the Landlord provide him with a letter of reference. The Tenant was informed during the hearing that ordering the Landlord to provide him with a letter of reference was not relief which was available under the *Residential Tenancy Act*. Accordingly, this request is denied.

In his written submissions, the Tenant made the following requests:

In addition to this, please order her to restore my email service via [internet service provider], and to allow me to live here rent free February through April 2017, to balance her deliberate infringement from 6 October 2016 through 10 January 2017 of my right to quiet enjoyment—which has caused me to set aside most other work for those three months in order to deal with it.”

During the hearing the Tenant failed to make any submissions regarding his allegation that the Landlord had tampered with his ability to send email. The documentary evidence provided in evidence suggests the Tenant is able to send email from the internet service provider, but not from the email program on his computer; this does not appear to be an issue with the provision of internet and is therefore not related to the tenancy. I decline to make the Order sought by the Tenant.

Although the Tenant failed to make a monetary claim, in his written submissions the Tenant requested an Order that he not be obligated to pay rent for February, March and April 2017 on the basis that the Landlord breached his right to quiet enjoyment. The Tenant did not make a monetary claim when he filed for dispute resolution; nor did he amend his application to make such a claim. Accordingly, the Landlord was not provided notice of such a claim, or the opportunity to respond and therefore the monetary claim was not properly before me.

The Tenant requested an Order that the Landlord comply with section 28 of the *Residential Tenancy Act*.

Section 28 of the *Residential Tenancy Act* deals with a Tenant's right to quiet enjoyment and reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Tenant has failed to prove that the Landlord breached his right to quiet enjoyment. I further reject his argument that the Landlord has engaged in a campaign to discredit and evict him.

I find the Landlord's request that the Tenant move his car from the garage to be reasonable. While storage of the car was initially agreed upon, it is not a material term of the tenancy. Further, I accept the Landlord's evidence that the storage of the car created insurance issues as well as potential health and safety issues which may not have been contemplated at the time the parties agreed the car could be stored in the garage. Further, and as noted in this my Decision, I find it was an implied term that the storage of the car would not cause damage to the Landlord's property.

A Landlord is permitted to enter the rental unit for regular inspections provided the Landlord complies with section 29 of the *Residential Tenancy Act*. Based on the evidence before me, including the photos submitted and the written communication from the Landlord to the Tenant, I find the Tenant has failed to prove her inspections of the rental unit breached his rights pursuant to section 29.

Further, I find the Landlord's concerns about the condition of the rental unit, and her requests that the Tenant take corrective measures, to be reasonable. In her initial communication in October of 2016 she asked the Tenant to remove items from storage areas which I find were not part of the Tenancy Agreement, such as the garage and shed. In addition, she asked that he replace the closet organizer and the window treatments. The photos submitted by the Landlord indicate the Tenant is not using the closet as a home office as he testified and the photos of the rental unit show plastic

sheeting on the windows. While the Tenant has the opportunity to return the rental unit to its former condition before the end of the tenancy, I find these initial requests to be more indicative of the Landlord's concern about the general condition of the rental as a result of the Tenant's excessive collecting and storage of items. The Landlord's more detailed communication in December of 2017 confirms these concerns and further explains the risk his behaviour poses to the rental.

Conclusion

In all the circumstances I find the Tenant has failed to prove that the Landlord's requests were and unreasonable disturbance, or otherwise breached his section 29 right to quiet enjoyment.

I further find the Tenant has failed to prove his claim that the Landlord has engaged in a campaign to discredit him and in doing so has breached his right to quiet enjoyment.

I therefore dismiss his claim that I Order the Landlord to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the Tenancy Agreement.

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: February 9, 2017

Residential Tenancy Branch