Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI OLC PSF RP RR FF

Introduction

These matters convened on January 17, 2017 for 65 minutes at which time the hearing time expired. The hearing was adjourned and an Interim Decision was issued on January 17, 2017. As such, this Decision must be read in conjunction with my January 17, 2017 Decision.

The hearing reconvened on January 25, 2017, for 76 minutes during which the Landlords and Tenant appeared. Although the application for Dispute Resolution listed only the Owner as respondent to this dispute, two Landlords, as defined by section 1 of the *Act,* appeared and submitted evidence. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I reminded the parties of their affirmation and I proceeded to hear the Landlords' submissions in response to the Tenant's application and closing remarks. Each person was provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Although I was provided a considerable amount of evidence, including verbal testimony and written submissions, with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

Issue(s) to be Decided

1. Are the two applicants considered tenants under the *Act?*
2. Has the matter regarding the rent increase been settled upon?
3. Should the Landlord be ordered to complete repairs to the rental unit?
4. Has the Tenant proven entitlement to reduced rent for repairs or services and facilities agreed upon but not provided?

Background and Evidence

The parties entered into a written tenancy agreement which listed one Tenant, J.H. That tenancy began on September 1, 2008 and has continued on a month to month basis.

Rent began at $1,300.00 per month and on July 22, 2008 the Tenant paid $650.00 as the security deposit. Rent has subsequently been increased to $1,389.15 per month.

I heard the Tenant state that she added her adult son and daughter's names to her copy of the tenancy agreement, listing them as tenants, before submitting the agreement into evidence. She stated that she added their names because they reside in the rental unit with her and she was not aware that she should not alter the tenancy agreement.

The rental property was described by the Landlords as being a two level house (main level and basement), with an attached garage and a detached garage. I heard the Landlords state the tenancy agreement included the "main floor only", with access to the washer and dryer which were located in the basement foyer at the bottom of the stairs.

I heard the Landlords state the written agreement did not specify if the Tenant had access to any other areas of the property. They noted that the Tenant was never allowed access to the detached garage where the Landlords' motorhome was stored. The Landlords submitted the entire basement, excluding the washer and dryer, was always the Landlords' space where they stored the Landlords' possessions. They stated the Tenant was told she could use the attached garage until such time as the Landlords required that space.

The Tenant amended her application for Dispute Resolution on December 9, 2016 stating the Landlords gave her a notice dated December 4, 2016, to remove her possessions from the basement and told her that the tenancy agreement did not include use of the driveway or the attached garage.

The Tenant submitted that since 2008 she has had full use of the attached garage and one room in the basement that she used to store her possessions which included things such as her Christmas decorations. I heard her state that after she served the Landlords with her application for Dispute Resolution she was sent a letter telling her she could no longer use the room in the basement.

The Owner testified and confirmed she had given the Tenant permission in 2008, to use the room in the basement for storage of her possessions. The Owner stated that she told the Tenant that her access to that room would only be temporary, until such time as they needed the space. I then heard the Owner stated that she recognized that eight years may not be considered temporary; however, their verbal arrangement was the Tenant could use the space until the Landlords needed it. She submitted the Landlords need the space now as they need to store some of the possession from their condo while they put it up for sale.

The Tenant testified that she informed the Landlords there had been an error on the Notice of Rent Increase form as it had listed an incorrect amount. After informing the Landlords of that error the Tenant stated that they mutually agreed that the rent would be increased to $1,389.15 per month, in accordance with the legislated increase amount. The Tenant has been paying the increased amount of $1,389.15 per month

since November 1, 2016. I heard the Tenant state that she was withdrawing her request to dispute the rent increase as they were able to settle that dispute prior to the hearing.

The Tenant stated she had been requesting repairs for several years. She said she requested, in writing, that the repairs be conducted during her absence in September 2016. When she returned the repairs were not completed so she now seeks orders for the Landlord to complete the following:

1) Replace the bathroom towel rack which broke;
2) Repair or replace the door knob on the second floor door which fell off;
3) Repair the bathroom ceiling which has paint peeling off due to moisture as there is no ceiling fan in the bathroom. She described the house as being very old and the bathroom having a window in the shower which she could not be opened due to its age. The bathroom had been repaired two previous times during this tenancy.
4) Replace or repair the washing machine as it fails to go through the spin cycle properly about 50% of the time; leaving the clothes soaking wet. The existing washer was used when it was provided to the Tenant in approximately 2012 as a replacement to the previous washing machine that broke.
5) Repair or resolve the flooding issue behind the washing machine. The Tenant stated that approximately every two months a buddle of water pools under and in front of the washing machine after it is used.
6) The Tenant requested 30 days written notice when the Landlord would be turning the exterior water taps off. She noted that the Landlord turns them off every October to winterize them and does not turn them back on until she makes a request every spring. She requested they not be turned off until the weather was cold enough to warrant shutting them off, that she be served written notice, and they be turned on as soon as the weather warmed up in the spring.
7) Repair the kitchen counter top which consisted of ceramic tiles that had been painted prior to the tenancy. The paint is now peeling causing paint chips to get into their food.
8) General painting of kitchen cabinets and the walls in the house for general maintenance and upkeep.

In addition to the requested repairs the Tenant sought a resolution to the Landlords' requests sent to her in a letter: a) She replace a broken smoke alarm which she knows nothing about as her smoke alarm works; b) replace a black compost bin that she did not use or remove from the property; although she recalls seeing it in the back yard earlier in the tenancy; c) remove an authorized locking bedroom door handle which her son installed on his room after they suffered a break in; d) repair or remount a toilet and toilet seat which the Tenant asserted should not be her responsibility. She stated the Landlord should check for floor rot and repair the toilet and seat if they came loose.

The Landlords disputed the requests submitted by the Tenant. They confirmed there was only one tenant listed on the original tenancy agreement at the time the agreement was formed. The Landlords' responses are summarized below:

- The window was broken by actions taken by the Tenants or their guests during this tenancy. The Landlords stated they were of the opinion it broke when someone used the lawnmower to cut the weeds on the patio which caused a rock to be thrown against the window.
- The Landlord submitted evidence to prove this was not the first time the bathroom ceiling had needed repair. The Landlords asserted that despite their efforts to education the Tenant, the damage is being caused by the Tenant's failure to maintain proper airflow and allowing excessive moisture to remain inside the bathroom. They submitted photographs of tinfoil placed over the furnace vents.
- This is the second towel rack to have broken during the tenancy which is not due to normal wear and tear. There is clear evidence of rust caused by an increased amount of moisture added to abnormal use caused the towel rack to break.
- As per their photographic evidence from September 2016 the toilet has shifted and twisted with such force that it has moved from the base.
- The Landlords argued that door knobs and handles simply do not fall off without warning. They may come lose, requiring minor adjustments and tightening, or they are misused and break off. The back door handle was newer, approximately eight years old.
- The kitchen counter had had existing chips at the start of the tenancy, as listed in the condition inspection report form. The Landlords were of the opinion that the Tenant accepted the painted countertop at the start of the tenancy.
- The Landlords recognized the Tenant's sense of pride with how she would like her home to appear so they offered to supply the paint to repaint the kitchen, cabinets, and bedroom, if the Tenant agreed to pay for a licensed painter that the Landlords preapproved. They asserted the damage to the bedroom walls was caused by the Tenant's guests and not normal wear and tear. The Tenant declined to pay for any services during the hearing.
- The Landlords have conducted upwards of 30 tests on the current top load washing machine. They noted that although the Tenant has alleged the problems with the washing machine are intermittent, despite their requests to attend while it is happening, she has never contacted the Landlords during a time the issue is happening. As a result the Landlords have never seen a load of clothes that continue to be wet or see a load causing water to spill onto the floor. The Landlords have spoken about these issues with technicians who have told them that if there was a problem such as the one described by the Tenant, the problem would continue to happen and would not be intermittent.
- The Landlord confirmed there have been instances where a storm drain has backed up into the laundry room. He noted that they had an excessive amount of snow that melted in one day causing the municipal drain system to overflow for many in that neighbourhood. He attended the day it happened and put a fan down to dry up the area immediately.

- The Landlord submitted evidence how they attended the unit shortly after the replacement washer was installed and did conduct some repairs to the drain system to accommodate for the more powerful pump in the replacement washer.
- The Tenant has known since the onset of the tenancy that the Landlords will turn the exterior water taps off in November and back on in March as part of their winterizing maintenance. The Landlords argued the Tenant has repeatedly reconnected the water hose and turned the water back on during a period when it could refreeze.
- The screen door handle, although existing at the time the Landlords purchased the house; would not simply fall off without warning, regardless of its age.
- The male Landlord stated that he was a firefighter by profession so he takes fire safety and smoke alarms seriously. He argued the Tenant failed to inform him about a broken smoke alarm he saw sitting on the counter, and given the presence of numerous candles in the house, he wanted it noted that he replaced the smoke alarm immediately. He stated that as part of his maintenance he checks the smoke alarms regularly and the damage he saw was not from normal wear and tear.
- The Landlords were willing to forego the issue regarding the missing green compost bin.
- The Landlords argued the written lease prevails and as that lease states “main floor only” they are of the opinion they can tell the Tenant she no longer has access to the basement storage and the attached garage. When asked if the lease specified use of the front and back yard areas, the Landlord responded that it was a given that the Tenant would have access to those areas.

In closing the Landlords argued that the Tenant and her children are perpetuating the problems by their disregard in how they use and care for the property. The Tenant’s son has added a lock to his bedroom, without any discussions with the Landlord, and he has not provided the Landlords with a key to that lock.

Analysis

Section 62 (2) of the *Act* stipulates that 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*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Relating to the named applicants to this dispute I considered that the original tenancy agreement listed only one Tenant, J.M.H. From her own submission the Tenant unilaterally wrote her children’s names on her copy of the tenancy agreement. As explained during the hearing, a tenancy agreement may be amended to change or remove a term, other than a standard term, only if both the landlord and tenant agree to the amendment in writing, pursuant to section 14(2) of the *Act.*

An occupant is defined in Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant.

Based on the above, I find the second named applicant to this dispute, K.L.R., (the Tenant's daughter) is not a party to this dispute. K.L.R. and the Tenant's son are both occupants, not tenants, and therefore they have no rights or obligations under the original tenancy agreement. Accordingly, the style of cause of this Decision has been amended to remove K.L.R. as an applicant, pursuant to section 64(3)(c) of the Act.

The Tenant withdrew her request to dispute the rent increase. Accordingly, no further action is required relating to that request.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Policy Guideline 1 outlines a landlord's and tenant's responsibility for the residential premises during a tenancy which I find to be relevant to the matters currently before me. In addition Policy Guideline 1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the tenant has the burden of proof regarding all items and issues sought in her application.

In addition to the above, section 32, subsections (2) and (3), stipulate that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; and a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

It should also be noted that despite some items being cosmetically less appealing they are still fully functional and can still be used for their intended purpose. Therefore, I find there is insufficient evidence to prove that the current condition of the cupboards, countertop, walls, and bathroom ceiling required repair orders. Furthermore, I was not convinced those items were devaluing the tenancy in their current state. As such those repair requests are dismissed.

In response to all of the remaining repair requests, I find the Tenant submitted insufficient evidence to prove the Landlord was in breach of the *Act.* Rather, when I take into account the age and character of the rental unit and the disputed evidence before me, I conclude there was sufficient evidence which supports the Landlords have not complied with the requirements set out in Policy Guideline 1 and in section 32 of the *Act*. Accordingly, I find there was insufficient evidence to warrant me ordering the Landlord to conduct the requested repairs; and those requests are dismissed.

As the matters before did not relate to an application filed by the Landlords, I felt it necessary to simply caution the Tenant that section 31(3) of the *Act* stipulates that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

Section 29(b) of the *Act* stipulates a landlord must not enter a rental unit that is subject to a tenancy agreement at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: the purpose for entering, which must be reasonable; and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Regarding the Tenant's demand for 30 days written notice that the exterior water taps will be shut off; from her submissions the Tenant acknowledged she was fully aware that the water would be shut off every year when the weather turns cold and is turned back on in the spring. I accept the Landlords' submissions that they cannot always predict when the weather will turn cold so they do their winterizing when they have an opportunity to do it. That being said, I find the Landlords are required to provide the Tenant with a minimum of 24 hours written notice that they will be attending the rental unit to winterize the exterior taps as required by section 29 of the *Act.*

I accept the Landlords' submissions that the tenancy agreement does not stipulate the Tenant has access to or use of the attached garage, the driveway, or the storage in the basement. However, I must also consider the fact the tenancy agreement does not stipulate the Tenant has access to the laundry room area although it does state a washer and dryer are included; the front and back yard; or the back patio. From their own submissions the Landlords' stated the Tenant's access to the front and back yard areas were "a given"; therefore, I find they acknowledged not every area of the property or access afforded to the Tenant was outlined in the tenancy agreement.

Estoppel is a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial. The rationale behind estoppel is to prevent injustice owing to inconsistency.

The potential issue with the Landlords attempts at restricting the Tenant's access to certain areas is one of cause of action estoppel. In determining the recent proposed restrictions of the Tenant's access to basement storage of some of her possessions and access to the attached garage and/or driveway; I considered how this landlord/tenant relationship recently became confrontational after the Tenant pointed out the amount of

the rent increase was not within the legislated amounts. Since that time each party has initiated retaliatory actions with the Tenant filing her application for dispute resolution seeking to obtain repair orders for issues that have been ongoing for several years; while the Landlords have started telling the Tenant she will no longer have access to storage in the basement or use of the attached garage.

It was undisputed the Tenant has had full use and full access to the attached garage; some storage in the basement; the driveway; the laundry room area; and the front and back yards for over eight years, from the onset of this tenancy in September 1, 2008. Therefore, I conclude the Landlords are estopped from summarily removing or restricting the Tenant's access to those areas without proper notice and without a reduction in the Tenant's rent.

Access to a yard; attached garage; parking in a driveway; or interior storage or laundry area are not considered an essential service, as defined by the *Act.* However, I do find they meet the definition of a non-essential service or facility. Therefore, if the Landlords wish to terminate the Tenant's access to any of those areas they are required to serve the Tenant with a 30 days' written notice, in the approved form, prior to the termination date, and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from that termination, pursuant to section 27(2) of the *Act.*

The aforementioned rent reduction is also provided for in Residential Tenancy Policy Guideline 22 which provides that if the landlord restricts a service or facility the tenant would be entitled to a rent reduction equal to a comparable service for which the tenant could obtain.

I have considered the manner in which the claim relating to the denied access was brought forward in an Amendment to the Tenant's application during a period of adjournment. I note the Tenant did not submit sufficient evidence to prove the actual value of a comparable service for any of the services / facilities for which the Landlords are considering restricting. In addition, the Landlords have not served the Tenant with 30 days' notice in the proper format. Accordingly, I dismiss the Tenant's application as it relates to a reduction or restriction to access to the basement storage; the attached garage; and the driveway, **with leave to reapply**.

In addition, I Order the Landlords to comply with the *Act,* Regulation, Policy Guidelines, and the tenancy agreement, as they relate to the restriction of services and/or facilities.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

Although the Tenant was not successful with the remaining issues listed on her application for Dispute Resolution; she was successful in having the Landlords comply with the legislated amount allowed for a rent increase which occurred only after she filed

her application for Dispute Resolution. Therefore, I grant the Tenant recovery of the filing fee from the Landlords, in the amount of **$100.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce her rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is $100.00.

Conclusion

The parties resolved the issues relating to the disputed rent increase prior to the hearing so the Tenant was awarded recovery of her filing fee. The Tenant was not successful with the balance of her application at this time.

This decision is final, legally binding, and 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 2, 2017

Residential Tenancy Branch