



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Huntley Investments and Dorset Realty Group Canada Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC; O; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking an Order that the Landlords comply with the Act, regulation or tenancy agreement; other unspecified order(s); and to recover the cost of the filing fee from the Landlords.

Both of the parties were present at the Hearing and provided affirmed testimony,

The Landlords acknowledged that the Tenants served the Landlords with the Notice of Hearing documents on May 3, 2017, and with copies of the Tenants' documentary evidence on June 2, 2017.

It was established that the Landlords served the Tenants with their documentary evidence on June 5, 2017.

It is important to note that the Landlord DRGCL provided two packages of additional documentary evidence, which were received by me on June 8, 2017, after the Hearing had concluded. I had made no Order that additional evidence could be provided and therefore this late evidence was not considered.

Issue(s) to be Decided

Should the Landlords be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The rental property is a house, a wooden structure built in 1907, which has been divided into seven suites. The Tenant AA currently resides in suite #1. The Tenant DB currently resides in suite #3.

On January 31, 2017, the Landlord HIL received an Order from the City, stamped "Legal Notice", which provides that the City found several contraventions of: the Zoning and Development By-law, the Building By-law; the Electrical By-law; the Standards of Maintenance By-law and the Safety Standards Act and Natural Gas and Propane Installation Code. The Order sets out several requirements and items that the Landlord must correct on or before March 31, 2017, and that failure to comply with the Order will result in the City initiating legal action against the Landlord. It also provides that "Failure to provide access to all areas of your building will result in the matter being referred to the City prosecutor for the laying of charges".

On March 14, 2017, the Landlord DRGCL provided the occupants of the rental property with notice stating that:

"Residents must remove all personal items that have been left and/or stored around the exterior of the building's common areas.

Also, the fire escape stairway and/or each floor-level landing, including the front porch, balconies and decks need to be completely cleared.

In addition, the basement area of [the rental property] must be completely empty.

Furthermore, the [City] is also requesting the removal of the garage; therefore, the rear yard will also need to be completely empty for the upcoming demolition."

The notice provides that "everything must be fully removed by April 30, 2017. After this date, a disposal company will remove all items from the areas noted above."

The Tenant AA gave the following testimony:

AA testified that she has lived in the rental property for 14 years. She stated that when she moved into the rental unit, the occupants of the rental property were allowed to keep personal items in the common areas. AA testified that when she first moved in, there were a large number of personal items in every common area of the house; however, over the years as occupants moved out, the number of personal items decreased to the point that they do not compromise fire safety regulations. She stated

that there is currently only a small table, patio chairs, and a trunk on the front porch and three bikes in the common storage area. AA submitted that the Landlords, by ordering that these items be removed, were attempting to limit the occupants' use of the common property by unilaterally changing the historical agreement that the occupants had with the Landlords without providing compensation by way of a rent reduction.

AA submitted that the City's Order was issued with respect to unit #7, and not with respect to units #1 or #3.

The Tenant DB gave the following testimony:

DB stated that he has lived in the rental property since May of 2013, and that he has always been allowed to store his bike in the common storage area. He testified that the common storage area is locked, but that he was given a key so he could store his bike there.

The Landlords' agent BW gave the following testimony:

BW testified that the City has criticized the Landlords in the past because of the "clutter" of the occupants' personal belongings. They acknowledged that it is not specifically noted in the City's Order, but stated that the City is concerned about the occupants' belongings on the fire escape and in the hallways. BW stated that the Landlords require the occupants to cease using common areas to store their belongings because of fire safety regulations and insurance liabilities. He submitted that there are more articles being stored in the common areas than the Tenants have mentioned. For example, BW testified that there were also abandoned tools and other debris in the common storage area as well as occupants' belongings being stored in the hallways and on the fire escapes.

BW did not dispute that the common storage area was locked, but stated that he didn't know how the Tenant DB received a key to the storage area.

Analysis

I find that the Landlords have a responsibility under Section 32 of the Act to provide and maintain the rental property in a state of decoration and repair that complies with the

health, safety and housing standards required by law. This would include complying with fire safety regulations with respect to the storage of occupants' personal items that may put the safety of the occupants and the Landlords' property at risk.

With respect to the Tenants' Application for Dispute Resolution, I find that the Landlords did not provide sufficient evidence that the storage of the Tenant AA's personal belongings on the porch, or the storage of the Tenant DB's bike in the common storage area constitutes a safety issue. I make no finding with respect to any other personal belongings of any of the rental property's occupants.

Section 27 of the Act provides:

Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The Act defines "tenancy agreement" as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

Based on the testimony provided and the history of these two tenancies, I find that the Tenant AA's tenancy agreement with the Landlord includes an oral agreement that allows her to store a small table, five small chairs and a trunk on the porch and that the Tenant DB's tenancy agreement includes an oral agreement that allows him to store his

bike in the common storage area. I find that the Landlords may not arbitrarily remove this part of their tenancy agreements without compensating the Tenants pursuant to the provisions of Section 27(2) of the Act.

I caution the Landlords against removal of any of the occupants' personal possessions from the rental property without considering the provisions of the Act and Part 5 of the regulations.

The Tenants have been successful in their Application and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlords.

Conclusion

If the Landlords seek to limit the Tenants' use of the common areas, as set out above, the Landlords are ordered to comply with Section 27(2) of the Act.

The Tenants may deduct a total of \$100.00 from future rent due to the Landlords, pursuant to the provisions of Section 72 of the Act.

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: June 27, 2017

Residential Tenancy Branch