



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants sought an Order that the Landlord comply with the *Residential Tenancy Act*, the Residential Tenancy Act Regulation and the tenancy agreement and to recover the filing fee.

The Tenants also filed an amendment dated July 22, 2017; in a hand written document attached to their amendment, the Tenants wrote that they also sought the following relief:

- full and private use of the backyard;
- an order that the Landlord be ordered to park his car and enter and exit the rental home by the front door only;
- that the Landlord remain 50 feet away from the Tenants at all times
- authority to change the locks without providing the Landlord a key;
- financial reimbursement for time and effort spent processing and managing the dispute and the stress which resulted from the escalation of the dispute.

Preliminary Matters

In their application materials the Tenants provided a copy of a 1 Month Notice to End Tenancy for Cause (the "Notice"). The Tenant, J.S., confirmed that she filed a separate application to dispute this Notice and was given a file number, although a date for the hearing of her application had not been set. I confirmed with the Tenant that her application to dispute the Notice was not before me and that she needed to proceed with her application to dispute the Notice failing which she would be conclusively presumed to accept the end of the tenancy pursuant to section 47 of the *Act*.

Similarly, the Tenants filed a Monetary Orders Worksheet on July 22, 2017 wherein they indicated they sought monetary compensation in the amount of \$8,293.82 for administrative costs, time spent preparing for the hearing as well as for "harassment". The Tenants did not amend their application for Dispute Resolution to include a monetary claim.

I informed the Tenant that claims relating to postage, photocopying and time spent preparing for a hearing were not recoverable under the *Residential Tenancy Act*, and that her claim for harassment lacked the required specificity for the Landlord to understand this claim.

The Tenant confirmed she did not wish to combine her monetary claim with the relief sought in her original Application for Dispute Resolution and would consider whether to file a further application for such relief.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I find that the priority claim in the Tenants' Application for Dispute Resolution is their claim for an Order that the Landlord comply with the *Act*, the *Regulation* and the tenancy agreement.

I further find that the Tenants failed to properly amend their Application for Dispute Resolution to clearly indicate they sought monetary compensation from the Landlord. Further, I find the amendment includes claims which are not recoverable under the *Act*, or lack the required specificity. I therefore dismiss the Tenants' monetary claims with leave to reapply.

Issues to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began November 1, 2016. A copy of the residential tenancy agreement was provided in evidence and which confirmed that the monthly rent was \$850.00 per month.

The Tenant confirmed that she lives in a basement suite with her husband and the Landlord lives upstairs. The tenancy agreement provides that the rental unit includes one parking spot.

The tenancy agreement provided in evidence includes a Rental Agreement Addendum which includes the following:

“...4. Outside common areas to be kept clean and tidy at all times.”

The Tenant stated that she had a verbal agreement with the Landlord as to how the backyard was to be shared. She stated that the Tenants were the only persons who were able to use the backyard and the table and chairs and the Landlord was to use the side yard to access his unit. She stated that this was the practice for seven months until June 2017 when the Landlord began using the backyard. She confirmed that the table and chairs belong to the Landlord. She stated that they replaced the table “at some point”, but they do not intend to keep it and that the table could be considered the Landlord's property.

The Tenant confirmed that the Landlord is not the property owner. She stated that he rents the entire house and has permission from the property owner to rent the downstairs to her and her husband, thereby becoming their Landlord. She further stated that she understands he has permission to rent the basement suite to her and her husband and he signed their tenancy agreement.

The Tenant stated that she spoke to the owner about the situation and asked him to mediate. The Tenant stated that the owner told her that he doesn't want to be involved and that's why he rents out the entire house to the Landlord as he doesn't want to deal with these sorts of problems.

In reply to the Tenants' submissions the Landlord testified as follows.

He stated that he rents the entire house from the property owner and has permission from the property owner to rent out the basement suite to subtenants.

The Landlord stated that there was no agreement that the Tenants would have exclusive use of the backyard and that he would never have agreed to this.

In evidence was a copy of text communication between the parties regarding the outside area as well as the table and barbeque. The Landlord submitted that this communication confirmed this was to be a common area, not used exclusively by the Tenants.

The Landlord stated that there are two floors. He has the top floor as well as two rooms (including an office and a storage room) on the bottom floor. He confirmed that he accesses these two rooms through an interior staircase as well as an exterior door which leads to the storage room, which in turn leads to the office. He confirmed that the Tenant does not have access to the storage room or the office.

The Landlord also stated that he never would have agreed to the Tenant having exclusive use of the backyard. He confirmed that he has rooms on the lower level and this is also his fire exit such that he accesses parts of his rental unit through the backyard.

In reply the Tenant confirmed that the Landlord enters a storage room through a door on the ground floor to which she and her husband do not have access.

Analysis

After consideration of the testimony and evidence of the parties and on a balance of probabilities I find the Tenants' application must be dismissed.

I find, based on the wording of the tenancy agreement, that the backyard is a common area to which both the Landlord and Tenants have access. I am persuaded that the Landlord has two rooms on the ground level which are accessible from the outside, as well as from the interior, and that in any case those rooms are not accessed by the Tenants.

I therefore decline the Tenants' request that I make an Order that they have full and private use of the backyard. I also find this request to be inconsistent with the tenancy agreement.

The Tenants allege a verbal agreement existed which granted them exclusive use of the backyard. The Landlord denies such an agreement existed. The Tenants suggested a neighbour could testify as to their observations of the normal use of the backyard; as noted during the hearing, the neighbour's testimony would, at best, indicate what they observed in terms of use of the backyard, but would not provide persuasive evidence as to whether this was a result of a firm agreement between the parties, or merely, the coincidental use of the Tenants when the neighbour happened to take notice of who was in the yard.

As such, I declined to hear from the neighbour as I found their testimony to be of minimal potential evidentiary value.

I also decline the Tenants' request that I make an order that the Landlord enter and exit his home from the front door only. I accept the Landlord's evidence that the ground floor exit is also a fire exit and to prohibit him from using this exit would create an unnecessary safety issue.

The Tenants request for an Order that the Landlord remain fifty feet from the Tenants at all times is impractical considering the fact the parties share the rental home. Further, such relief is not available under the *Residential Tenancy Act*.

As noted during the hearing, I decline the Tenants request that I authorize them to change the locks and allow them to retain the only set of keys. A Landlord is entitled to keys to the rental property for maintenance and emergency purposes.

Having been unsuccessful, the Tenants request for recovery of the filing fee is denied.

Conclusion

The Tenants request for an Order that the Landlord comply with the *Act*, the *Regulation* or the tenancy agreement is dismissed. The Tenants claim for recovery of the filing fee is similarly dismissed.

The Tenants' claim for monetary compensation is dismissed with leave to reapply.

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: August 16, 2017

Residential Tenancy Branch