



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, PSF, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order placing conditions on the Landlord’s right to enter the unit - Section 70;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for the provision of services or facilities - Section 72; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under affirmation to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to two parking spaces in the garage?

Is the Landlord entitled to use a portion of the unit for storage and overnight stays?

Is the Tenant entitled to notice from the Landlord for the Landlord’s access to the unit?

Background and Evidence

The Landlord confirms that they provided no documentary evidence for this hearing.

The following are undisputed facts: In May 2017 unit was first shown to the Tenant by an agent that now does not work for the Landlord. At the time of the showing the unit had a 3 car garage and the agent informed the Tenants that prior to the occupation date

of the tenancy the garage would be converted into a separate two car garage and a one car garage with the owners using the one car garage for storage. The Tenant agreed to this arrangement at the time of viewing. The tenancy agreement was signed on May 30, 2017 with rent of \$2,700.00 payable on the first day of each month and occupancy on June 11, 2017, the start of the tenancy. The tenancy agreement is for a fixed term ending May 31, 2018. The tenancy agreement only provides that rent includes parking for two cars. There is no provision in the tenancy agreement or the addendum in relation to the owner's use of any part of the unit or garage. The garage was converted by the time of occupancy.

The Tenant states that upon their arrival at the unit they were informed that the owners would now have use of the two car garage and the Tenants would only have use of the one car garage. The Tenant states that she did not agree to this change in the tenancy agreement. The Tenant claims the use and possession of the two car garage.

The Landlord states that the intention of the Landlord was to provide parking in the driveway. The Landlord agrees that neither the Landlord nor the owners were present during the discussions about the terms of the tenancy with the Tenant or at the time of signing the tenancy agreement. The Landlord states that the agent informed the Landlord that it was clear at the time of signing the agreement that the double car garage was not included with the rent. The Landlord states that no witness statement was obtained from this agent as this person is no longer employed.

The Tenant states that at the time of viewing the unit the Tenants were shown an area of the unit that was separated by a sliding barn door and were told that this area (the "Suite") was not included with the rental unit as the owners would use it for storage and occasional overnight stays amounting to 4 or 5 stays during the tenancy period. At the time of viewing the Tenant agreed to this term. The Tenant states that when the tenancy agreement was signed there was nothing in the agreement about the owner's use of the Suite. The Tenant states that a schedule or notification procedure was

expected with the tenancy agreement but that nothing was included in the agreement or the addendum. The Tenant states that the original agent was asked several times to clarify the owners stays at the suite but that nothing has been done. The Tenant states that the new Agent has not contacted them to clarify the terms of the tenancy agreement despite their requests. The Tenant states that the Suite has since been used repeatedly by more persons than the owners and no proper notice, where provided at all, has been given. The Tenant states that the access to this area is by anyone who has the code and the Tenant does not know what persons have that code. The Tenant is concerned about their safety and security being compromised by this access to the rental unit. The Tenant asks that the Landlord be restricted from overnight stays. The Tenant does not dispute the Landlord's access to this area for storage but asks that the Landlord provide the required notification about that access. The Tenant indicates that they wish to pursue a good relationship with the owners and new Agent and that they are amenable after the Decision is issued to negotiating other arrangements for the owner's stays at the suite. The Tenant was not agreeable to pursuing a settlement at this hearing.

The Landlord states that it was clear from the outset that the area in question is an owner's suite as is evidenced in the communications between the Parties despite nothing being in the tenancy agreement. The owner states that if the owners are not entitled to use the two car garage it would take some time to vacate from the garage as they would have to arrange their travel and time for the packing and removal of their goods.

Analysis

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, the right to exclusive possession of the rental

unit subject only to the landlord's right to enter the rental unit in accordance with the Act.

There is nothing in the tenancy agreement in relation to the use of any portion of the rental unit by the owners. The tenancy agreement does not indicate that the Tenants are renting only one of two suites in the building. The tenancy agreement is clear that the Tenants are provided parking for two vehicles and given the lack of direct, documentary or witness evidence from the Landlord about the discussions prior to and at the signing of the tenancy agreement I do not accept that the Tenants agreed to use of only the one car garage. As such I find that the owners are not entitled to use and access the two car garage and I order the Landlord to have their belongings removed within one week of receipt of this Decision or later if agreed to in writing by the Tenants. Should the Landlord fail to act as ordered the Tenants have leave to reapply for compensation for the loss of use of the garage from the onset of the tenancy to the date that the belongings are removed.

Given the lack of any terms in the tenancy agreement or addendum and considering that the Landlord has provided no direct, witness or documentary evidence I find that the oral terms for stays at the Suite, if any, are not enforceable. I find therefore that at most, given the agreement of the Tenant, and effective immediately the owners may use the Suite for storage only and only in accordance with the notice provisions required for access to the unit as provided by the Act. Should the Landlord allow access to this area for any other use or without the required notice, the Tenant has leave to reapply for compensation for loss of quiet enjoyment from the onset of the tenancy. The Parties are at liberty to agree to other terms for the use of the Suite however the Parties must reduce any agreed oral terms to clear written provisions that would amend or add to the existing tenancy agreement.

As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable.

Conclusion

The Tenants have the right to access and use the two car garage. The owners may not stay at the Suite without the written agreement of the Tenants and the Landlord must provide the required notice for access to their stored belongings in the Suite.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 06, 2017

Residential Tenancy Branch