



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *PSF, LRE, MNDC*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the loss of a facility and for an order directing the landlord to allow her the exclusive use of her back yard and to place restrictions on his right to enter the backyard.

The tenant stated that she served the landlord with the notice of hearing and evidence package in person on February 07, 2018. The landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to compensation? Is the tenant entitled to the other remedies she has applied for?

Background and Evidence

The tenancy started in June 2013. The property changed hands in April 2015 and the tenant entered into a new tenancy agreement on April 01, 2015 with the new owner who is also the current landlord. The rental unit consists of suite located on the upper floor of a two level home. The landlord lives on the lower level. The monthly rent is \$1,040.00 payable on the first of each month.

The tenant stated that the back yard was divided into two distinct areas and each area was designated for the exclusive use of the occupants of each level. There is a staircase from the upper suite into the backyard. The tenant was allotted the area of the backyard that extended from the bottom of the staircase to the right property line. The occupant of the lower level was allotted the remainder of the backyard which extended from the bottom of the stairs to the left property line.

This arrangement went into practice from the start of the tenancy in 2013. The tenant provided photographs of the property with notations regarding the division of the backyard.

The tenant testified that when the new owner purchased the property, he moved into the lower level and the arrangement regarding the use of the backyard continued. The tenant stated that this was not recorded on the tenancy agreement but was a verbal agreement between herself and the current landlord. The tenant testified that this arrangement worked well without any problem for two years into the tenancy with the new landlord.

The tenant also filed into evidence a letter written by the previous owner confirming the arrangement between him and the occupants of the upper and lower levels of the house, regarding the use of the back yard. This letter supports the testimony of the tenant.

The tenant stated that sometime in May 2017, the landlord asked her if he could put some garden beds in her area of the back yard. The tenant did not agree. The tenant stated that shortly after, she went away on holiday and when she returned, the landlord had installed three large boxes containing garden beds, in her portion of the back yard. The landlord had also stored his garden equipment beneath the staircase that led from the upper unit to the tenant's area of the back yard.

The tenant made verbal requests to the landlord to remove the planter boxes and his other belongings, but he refused to do so. The tenant wrote a letter in January 2018 to the landlord with the same requests and when the landlord indicated that he had no intention of removing the boxes or his belongings, the tenant filed for dispute resolution.

Analysis

Based on the undisputed testimony of the tenant and the documents filed into evidence, I find that the tenant had a verbal agreement with the previous landlord for the exclusive use of half the backyard. The area that was designated for the tenant's exclusive use extended from the bottom of the staircase that led to the backyard from the upper suite, to the right property line. The left half of the back yard was for the exclusive use of the occupant of the lower level. The previous landlord confirmed this arrangement in a letter that the tenant obtained from him, to file as evidence to support her application for dispute resolution.

The tenancy with the new landlord started in April 2015 and the above mentioned verbal arrangement continued for two years until May 2017, at which time the landlord installed three planter boxes in the tenant's portion of the yard and also started storing his belongings under the staircase leading into the backyard from the upper suite.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail

In this case, it is clear that a verbal agreement was in place from the start of tenancy and continued on when the current landlord purchased the rental unit. The terms of the agreement were that the tenant had exclusive use of a portion of the back yard that extended from the bottom of the stairs to the right property line.

In the absence of any contradictory evidence from the landlord and taking into consideration the length of time that this arrangement was in place, I must uphold the terms of the verbal agreement. I order the landlord to allow the tenant exclusive use of the right side of the backyard as was agreed upon by the previous landlord and allowed to continue for two years by the current landlord.

Accordingly the landlord must remove the planter boxes and all his belongings stored under the staircase that leads into the backyard from the upper suite. I order the landlord to accomplish this task within one month of receipt of this decision.

Regarding the tenant's monetary claim, I find that she was not denied use of the backyard and therefore is not entitled to compensation. However if the landlord does not follow through with the removal of the planter boxes and his belongings by June 01, 2018, the tenant is at liberty to make application for compensation.

The tenant has also applied for an order restricting the landlord's right to enter the backyard. The *Residential Tenancy Act* does not require that notice be given by the landlord for entry onto the residential property.

However entry on the property by the landlord should be limited to reasonable activities such as collecting rent, serving documents and delivering notice of entry to the premises.

Based on the above, I find that the parties had a verbal agreement and pursuant to the terms of the agreement, I order the landlord to remove the planter boxes and his belongings from the tenant's portion of the backyard. The tenant's claim for compensation is dismissed.

Conclusion

- The tenant is granted exclusive use of the right side of the back yard as per the verbal agreement.
- I order the landlord to remove the planter boxes and his belongings from the tenant's portion of the back yard no later than June 01, 2018.
- The tenant's application for compensation is dismissed.
- The landlord may enter the tenant's portion of the backyard without notice for reasonable activities as described above.

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: April 06, 2018

Residential Tenancy Branch