



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement, an order for the Landlord to provide services or facilities required by law or the tenancy agreement, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the Respondents, who are agents for the Landlord (the “Agents”). All parties provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided by them in the online application system.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing, I identified that the Respondents listed on the Tenant’s Application, A.L. and P.P., are different from the landlord listed on the tenancy agreement. The parties agreed that the name of the landlord is correct on the tenancy agreement and that the parties named as the Respondents are in fact agents for the landlord.

Section one of the Act includes in the definition of a landlord, the owner of the rental unit, the owner’s agent, or another person who, on behalf of the landlord, permits occupation of the rental unit under the tenancy agreement or exercises powers or performs duties under the Act, the tenancy agreement or a service agreement. The Respondents testified that they are the property manager and the former property manager and that both of them act as agents for the landlord. Based on the above, and pursuant to section one of the Act, I find that the Respondents fall under the definition of a landlord. However, for the sake of clarity, the landlord

listed on the tenancy agreement will be referred to as the “Landlord” throughout this decision and the Respondents A.L. and P.P. will be referred to as the “Agents”.

Preliminary Matter #2

The Landlords testified that they submitted late evidence upon which they wished to rely in the hearing; however, the late evidence was not before me for consideration. Rule 3.15 of the Rules of Procedure states that the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch (“the Branch”) not less than seven days before the hearing. Rule 3.17 states that evidence not provided to the other party and the Branch directly or through a Service BC office in accordance with rule 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence that was not available to be submitted in accordance with rule 3.15. Rule 3.17 also states that the arbitrator has the discretion to determine whether to accept late evidence provided the acceptance of the late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Tenant testified that she only received some of the evidence the Agents testified was sent to her and provided a list of the evidence received. The ability to know the case against you and to prepare evidence in your defense is fundamental to the dispute resolution process. Given that the late evidence of the Landlord was not received by the Branch or the Tenant, I find that it would be prejudicial to the Tenant and a breach of the principles of natural justice to accept the late evidence for consideration in this matter. As a result, the hearing proceeded based only on the evidence both parties agreed was received by them in accordance with the Rules of Procedure.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement and to provide services or facilities required by law or the tenancy agreement?

Is the Tenant entitled to the recovery of the filing fee?

Background and Evidence

At the outset of the hearing the Tenant testified that her Application regarding an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement relates to the hours within which the Landlord and the Agents are entitled to conduct the business of the Landlord and the use of a building message board. She also testified that her Application regarding an order for the Landlord to provide services required by law or the tenancy agreement relates to parking.

The Tenant argued that the Landlord and the Agents are restricting the use of a building message board; however, the Landlords testified that the board is actually for the use of the Landlord. In any event, the Agents stated that they currently allow the residents to post items to the board, provided they are not lude, inappropriate, offensive, or unsightly. The Tenant did not provide any documentary evidence to establish that she is entitled to the use of the message board under the *Act*, the regulation, or her tenancy agreement. Although the Tenant alleged that the Agents have removed her posted items and the posted items of other occupants from the message board despite the fact that they were not lude, inappropriate, offensive, or unsightly; she admitted that she has never witnessed the Agents, or any other employees for the Landlord, removing her or other residents posted items from the message board.

The Tenant stated that the Landlord's failure to only conduct business during the posted office hours has breached her right to quiet enjoyment of her rental unit and sought an order that the Landlord only conduct business in relation to her tenancy during these hours and to give 24 hours written notice before knocking on her door. The Tenant pointed to three instances where she believes the Landlord or the Agents breached her right to quiet enjoyment. In one instance she stated that an agent knocked on her door at 8:30 P.M., in another she stated that an agent knocked on her door between 5:00 – 5:30 P.M., and in the last instances she stated that an agent phoned her at 5:45 P.M. Both parties agreed that these instances related to tenancy issues or the Landlord's rights and obligations under the *Act*, but the Tenant testified that these disturbances were unreasonable as she needs rest due to her disability.

The Agents argued that these instances did not breach the Tenant's right to quiet enjoyment as they were very brief in nature and did not occur during unreasonable hours. Further to this, the Agents stated that in all three instances, the Agents were exercising the rights and obligations of the Landlord under the *Act*, such as addressing tenancy issues or serving notices, and that there is nothing in the *Act*, regulation, or the tenancy agreement which restricts their right to do so to only the hours for the on-site office. The Agents also stated that there is nothing in the *Act*,

regulation, or tenancy agreement that requires them to give 24 hours written notice to knock on her door.

The Tenant also sought an order for the Landlord to provide her with a disabled or other comparable parking spot in the building. The Tenant stated that she obtained a parking spot at the start of her tenancy, which was subsequently taken away, and that the alternative permanent parking options provided to her are unsuitable due to her disability. The Agents stated that although the Tenant obtained a parking spot at the start of her tenancy, the provision of a parking spot is not part of her tenancy agreement and is in fact, subject to a separate parking agreement. The Landlord testified that the parking agreement states that it may be terminated at any time upon 30 days' notice and pointed to the tenancy agreement in the documentary evidence before me in support of their testimony that a parking stall is not part of the tenancy agreement. The Agents agreed that the Tenant's original parking agreement was terminated due to an order from the city regarding the use of visitor parking stalls as permanent parking but stated she has been permitted to continue parking in a visitor stall pending the outcome of the hearing.

Further to this, the Agents stated that there is a waiting list for parking spaces in the building, which the Tenant is on, and that they are in the process of auditing the available spots and allocating them according to the waiting list. As a result, the Agents stated they believe that a parking stall will be available for the Tenant shortly.

The Tenant also stated that the Landlord has a duty to accommodate her disability and that she is therefore entitled to a disabled parking spot in the building. Both parties agreed that at least two disability parking stalls are available in the building; however, the Agents testified that one has not been allocated to the Tenant as she has not provided them with documentary evidence that she is approved by the governing body that administers disabled parking passes to use a disabled parking spot. When asked, the Tenant admitted that she has not yet received her disabled parking placard. She also did not provide me with any documentary evidence from the governing body that administers disabled parking passes that she qualifies for a disability parking pass.

Analysis

Although the Tenant argued that the Landlord and the Agents are restricting the use of a building message board, she did not provide any documentary evidence to establish that she is entitled to the use of the message board under the *Act*, the regulation, or her tenancy agreement. Further to this, although the Tenant alleged that the Agents have inappropriately removed her posted items and the posted items of other occupants from the message board; she admitted that she has never witnessed the Agents, or any other employees for the Landlord removing her or other residents posted items from the message board. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that she is either entitled to the

use of the message board under the *Act*, regulation, or her tenancy agreement or that the Landlord or Agents are restricting her access to it.

Based on the above, I dismiss the Tenant's Application for an order for the Landlord to provide services or facilities required by the *Act*, the regulation, or her tenancy agreement in relation to the message board, without leave to reapply.

The Tenant sought an order restricting the Landlord's right to conduct business as a landlord to the posted hours of operation for their onsite office and to provide 24 hours written notice to knock on her door. However, the Tenant did not submit any documentary evidence to establish that the *Act*, the regulation, or her tenancy agreement require the Landlord to only conduct business during a particular time of the day or week or to provide 24 hours written notice to knock on her door. Further to this, I find that the posted office hours relate only to the hours within which the Landlord agrees to have an agent present in the office, not to the hours in which the Landlord or their Agents are entitled, by law, to conduct business relating to the *Act*, regulation, or her tenancy agreement. As a result, I dismiss the Tenant's Application for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement in this regard without leave to reapply.

The Tenant also sought an order for the Landlord to provide her with a disabled or other comparable parking spot in the building. Although the Tenant stated that she is a person with disabilities and is therefore entitled to the disabled parking spot, she admitted that she has not yet received her disabled parking placard and did not provide me with any documentary evidence from the governing body that administers disabled parking passes that she qualifies for disabled parking. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that the Landlord or the Agents are required to provide her with access to a disabled parking space by law. In any event, the Agents acknowledged that there are two disabled parking spots available in the building and that should the Tenant provide them with documentary evidence that she is approved by the governing body that administers disabled parking passes to use disabled parking; a spot would be available to her.

Further to this, the tenancy agreement in the documentary evidence before me does not indicate that parking is included in her tenancy agreement. While the Tenant argued that it was her understanding that the parking space she rented under a separate agreement would be available to her for the duration of her tenancy, she did not provide any documentary upon which she came to this understanding. Based on the testimony and documentary evidence before me, I find that parking is not included in her tenancy agreement. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that parking is a service or facility required to be provided to her under the tenancy agreement or law.

Based on the above, I dismiss the Tenant's Application for the Landlord to provide her with a service or facility, in this case a parking space, as required by the tenancy agreement or law without leave to reapply.

Although the Tenant also submitted documentary evidence and some limited testimony regarding harassment and negligence in the removal of tree stumps, rule # 6.2 of the Rules of Procedure states that the hearing is limited to the matters claimed on the application unless the arbitrator allows a party to amend the application. The Tenant clarified at the start of the hearing that her Application related only to parking, the use of a message board, the hours within which the Landlord may conduct business, and recovery of the filing fee. The Tenant did not submit an Amendment to an Application for Dispute Resolution (an "Amendment") making a claim in relation to harassment or negligence and did not request an amendment in the hearing. As a result, I have made no findings of fact or law in relation to harassment or negligence in this decision.

As the Tenant was unsuccessful in her Application, I decline to grant her recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed in its entirety without 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: May 4, 2018

Residential Tenancy Branch