



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”) seeking an order for the Landlord to provide services or facilities agreed to in the tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenants, and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application, the Notice of Hearing or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (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 in the hearing.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to an order for the Landlord to provide services or facilities agreed upon in the tenancy agreement?

Background and Evidence

The Tenants sought an order for the Landlord to comply with the tenancy agreement and provide them with access to half of the garage for storage and half of the driveway for the purpose of parking. The tenancy agreement in the documentary evidence before me states that the driveway and garage are to be shared between the Tenants and the occupant of the upstairs rental unit and all parties agreed that this is correct.

The Tenants stated that the upstairs occupant often uses their half of the driveway and that although they currently do not have a vehicle, they need use of this space for when they rent vehicles, for deliveries, and for the use of their guests as there is no legal street parking in front of the home or in the alley behind it. In support of their testimony that they do not have access to half of the driveway as agreed upon, the Tenants submitted a photograph of two vehicles parked in the driveway which they state belong to the occupant upstairs.

Although the Agents did not deny that the Tenants' use of the driveway is being restricted, they questioned how the Tenants are aware who owns the other vehicle and stated that they have not really been aware there is an issue. The Tenants responded by stating that although this has been an ongoing issue, they have only recently started complaining to the Landlord and the Agents about it as it is becoming increasingly problematic for them and the occupant upstairs is abusive, uncooperative, and difficult to deal with.

The Tenants also stated that they do not have use of half of the garage space for storage as agreed upon as the occupant upstairs believes he is entitled to full use of the garage and harasses them when they attempt to use it in addition to removing and sometimes disposing of their items.

The Agents did not dispute the testimony provided by the Tenants' regarding use of the garage; however, they did state that the occupant upstairs originally rented the entire single family dwelling, including the garage, and that a subsequent tenancy agreement is now in place with the upstairs occupant for only the upper portion of the home and shared use of the garage and driveway.

Analysis

Section 58(1)(b) of the *Act* states that a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of rights and obligations under the terms of a tenancy agreement that relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities. Section 62(3) also states that the director may make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations or a tenancy agreement and an order that the *Act* applies.

There was agreement between the parties that the Tenants are entitled to use of half of the garage space for storage and half of the driveway for parking and as a result, I find that the Tenants are entitled to use of these spaces under their tenancy agreement. The Tenant's testified that the upstairs Tenant is preventing them from both using their allotted storage space in the garage and parking in the driveway and submitted a significant amount of documentary evidence including photographs, copies of e-mail and other correspondence with the Landlord and with the occupant upstairs, as well as a copy of their tenancy agreement and audio recordings in support of their position. Although the Agents testified that they do not live at the property and ultimately do not know what is occurring there unless the Tenants bring it to their attention, they did not submit any documentary evidence or testimony refuting that the upstairs occupant, who is also a tenant of the Landlord under a different tenancy agreement, is in fact restricting their access to the garage and parking.

Based on the above, I find that the Tenants' have satisfied me, on a balance of probabilities, that their access to garage storage and parking are being restricted by another occupant of the property who also has a tenancy agreement with the Landlord. As I have already found above that the Tenants are entitled to use of half of that garage space for storage and half of the driveway for parking under their tenancy agreement, I therefore order the Landlord or their Agents to, within seven days of the date of this decision, take any action necessary to ensure that the Tenants have full use of and access to half of the garage space for storage and half of the driveway for the parking of their and their guests vehicles.

Should the Landlord fail to comply with the above order, the Tenants are at liberty to file an Application seeking compensation for any damages suffered due to the Landlord's non-compliance with the order and/or loss of use of the above noted spaces.

Conclusion

I order the Landlord or their Agents to, within seven days of the date of this decision, take any action necessary to ensure that the Tenants have full use of and access to half of the garage space for storage and half of the driveway for the parking of their and their guests vehicles.

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: September 25, 2018

Residential Tenancy Branch