



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, AAT, RR

Introduction

This was the Tenants' Application for Dispute Resolution, seeking orders as follows:

- An order for the Landlord to comply with the Act and/or tenancy agreement;
- An order for the Landlord to provide facilities or services required under the tenancy agreement;
- An order for the Landlord to allow access to the unit or site; and
- An order for the reduction of rent.

The male Tenant appeared and testified on behalf of the Tenants. The Landlord was represented by her son at the hearing, and in this decision I refer to his testimony and evidence as being from "the Landlord." Both the Tenant and the Landlord gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. The hearing process was explained and the participants were asked if they had any questions.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Should the Landlord be ordered to comply with the Act or tenancy agreement?
- Has the Landlord not provided services or facilities required under the tenancy agreement?
- Has the Landlord prevented the Tenants from access the rental unit?
- Should the rent be reduced?

Background and Evidence

This tenancy began under a written agreement on September 1, 2017. The monthly rent is currently \$925.00, payable on the first day of the month.

The subject rental unit is the lower unit in a house with up and down self-contained rental units. The Tenants occupy the ground floor, while the upper unit is occupied by other renters and occupants. The Tenants access their rental unit through a door that is located in an enclosed car port. The enclosed car port contains laundry facilities that are accessed by both the Tenants and the renters and occupants of the upper unit.

The male Tenant testified on behalf of both Tenants. He testified that he and his wife have both been assaulted, both physically and verbally by the renters upstairs. The Tenant testified that this has occurred on three occasions. In the latest incident the police had to attend the rental unit.

The Tenant testified that there have been ongoing heated exchanges with the renters from the upper unit, from the outset of the tenancy. He alleges he has been threatened by the son of the female renter who occupies the upper unit. He alleges there is a "no contact order" against this person to not attend the premises where the rental units are located.

The Tenant further testified he has a mobility issue and it is difficult for him to move, and he is currently experiencing vision problems as well. His spouse, the other Tenant, also has health issues.

He explained that it is a very difficult situation for them, as the occupants of the upper unit have to access the laundry room through the enclosed carport. The only access to the laundry is through the one door, which the Tenants also use to enter and exit their rental unit. The Tenant testified that there is a constant tension between them and the occupants of the upper unit, and there have been serious incidents.

The Tenants and the Landlord have been to one previous Dispute Resolution Hearing, in which the rent was reduced by settlement agreement as the Tenants were not able to access the backyard. However, the Tenants had not made a claim in the previous application for the same relief sought here, although the Arbitrator in that hearing explained in their written decision the obligations of the Landlord to provide quiet enjoyment to the Tenants and also included the relevant portions of the Act.

The Tenant explained the most recent incident that occurred on May 31, 2018, between him and the renters or occupants of the upper unit. He testified he was outside with his dog in order for the dog to relieve itself. The Tenant testified that the male occupant or guest of the renter of the upper unit was watching out of a window. He testified that the dog is nervous of the people in the upper unit and was having trouble relieving itself. The Tenant tried to walk the dog around the yard and it eventually had a loose bowel movement, on the grass in a corner of the front yard. The Tenant testified that the male occupant or guest from the upper unit came out into the yard. The male came out with a "pooper-scooper", picked up the dog feces, and hurled the dog feces at the Tenant. The Tenant testified he was covered in dog feces.

The Tenant explained that this caused him to lose his temper and he got into a physical fight with the male occupant. The Tenant testified that some neighbours broke up the fight, and the police attended. According to the Tenant, the male occupant has been charged by the police and a court appearance is scheduled for January of 2019.

The Tenant explained he notified the Landlord after the first incident occurred, shortly after the tenancy started, and then when other incidents have occurred. He testified that the Landlord has done nothing to protect him and his spouse. He has complained to the Landlord several times but no action has been taken by the Landlord.

He testified that in another incident the woman from the upper unit struck his spouse so hard she caused a rib fracture.

The Tenants seek orders for the Landlord to comply with the Act and make sure that they have quiet enjoyment and do not get threatened or harmed from the occupants upstairs.

The Tenants want to make sure they have access to the rental unit free from threats or harassment from the upper unit occupants.

The Tenants seek a rent reduction of \$400.00 per month due to the problems they have faced in the tenancy. They say that this is set out in their tenancy agreement and that the Landlord should be ordered to reduce their rent as it is a service or facility agreed upon in the tenancy agreement.

In reply, the Landlord testified that neither he nor his mother (the owner), are at the rental unit every day. The Landlord testified that the police have informed him they have a different view of the events that have been occurring at the rental unit. The

Landlord alleges that it is the Tenants who cause the problems. The Landlord further testified that he is actually not sure who to believe between the two parties.

The Landlord also testified that the Tenants are behind in their rent, and did not pay any rent for September 2018.

The Landlord further testified that the occupants of the upper unit have lived there longer than the Tenants, and there were no previous incidents with the renters upstairs reported to the Landlord before this tenancy began.

The Landlord testified that the male Tenant had assaulted the woman who lives upstairs. He alleges that the Tenants appear to be as much of a problem as the renters in the upper unit. He is unable to determine who is at fault, but he feels that the Tenants have also contributed to the fighting and tensions at the rental unit.

The Landlord testified there is no way to separate the parties as the laundry facilities are only located in the shared common space. He testified the owner would not pay to have separate laundry facilities for the parties. He explained he would be giving a 10 day Notice to End Tenancy to the Tenants for non-payment of rent.

In reply to these allegations, the Tenant testified he was lying on floor when he was attacked by this woman, so he was defending himself when he struck her.

The Tenant agreed they had not paid rent for September 2018. He said that he is an artist and is waiting for payment from someone.

Analysis

Based on the above, the testimony and evidence and on a balance of probabilities, I find as follows.

Under the tenancy agreement and the Residential Tenancy Act (the "Act"), the Landlord is required to provide the Tenant with quiet enjoyment of the rental unit. Section 28 of the Act sets this out:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord has provided insufficient evidence to show they have made any attempt to protect the Tenants' rights as set out above. It appeared from the testimony of the Landlord that they had not spoken with the occupants upstairs in any detail and had not asked them to behave in a reasonable manner.

I do not find the Landlord has acted reasonably here, as in at least one of the instances, the one in which a male renter, or the guest of the renter in the upper unit, flung dog feces at the Tenant. This action is grounds for the Landlord to have issued a Notice to End Tenancy for cause to the renters in the upper unit. It is clear this is an instigating action, one that the Tenant should not have suffered. Yet the Landlord did nothing in this instance.

The Landlord testified he was not sure of what to do, and since the Tenants had been late paying rent on occasion, it appeared the Landlord made no or little effort to investigate any of these situations. At the very least I would have expected the Landlord to provide a warning letter to the renters upstairs that they were infringing on the rights of the Tenants.

Therefore, I find the Landlord has breached the Act by failing to protect the Tenants from interference in the common areas of the rental building, and by failing to protect them from unreasonable disturbance.

However, I am not able to award the Tenants a rent reduction, as they have failed to pay rent at the time of the hearing. Furthermore, the Tenants did not set out a monetary claim based on past breaches by the Landlord, and therefore, I am unable to order repayment of rent that was paid in the past. If the Tenants pay their rent and the tenancy continues, they are granted leave to reapply for a rent reduction and for past losses.

Nevertheless, I order the Landlord to comply with the Act and tenancy agreement and provide the Tenants with the protections as set out in Section 28. The Landlord should make it clear to the renters in the upper unit that they are not to have any further negative contact with the Tenants, or they will risk having their tenancy ended. The Landlord must take steps as allowed under the Act, up to and including ending the tenancy of the renters in the upper unit if the behaviour of the renters in the upper unit does not improve.

Conclusion

The Landlord is breach of the Act by failing to protect the quiet enjoyment of the Tenants. However, I am unable to order the reduction in rent as claimed by the Tenants as they have failed to pay rent. If the Tenants pay their rent they are granted leave to make a further application for monetary relief from the Landlord. If they are claiming for past rent, they must set this out clearly in their application.

The Landlord is ordered to comply with the Act as set out 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: September 13, 2018

Residential Tenancy Branch