Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLEASANT VIEW HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on September 6, 2018. The tenant seeks the following remedies under the Act:

1. an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62(3) of the Act; and,
2. an order for compensation for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on November 1, 2018 and the landlord's agent and the tenant attended, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents. The landlord's agent clarified the full legal name of the landlord, which I have corrected on the style of cause (the cover page) of this decision.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the tenant entitled to an order that the landlord comply with the Act, the regulations, or the tenancy agreement?
2. Is the tenant entitled to an order for compensation for recovery of the filing fee?

Background and Evidence

In this case, the tenant is an avid biker of 75 years of age who took up cycling many, many years ago. In a letter to the landlord, he notes that “I still go on 30 to 50 kilometer rides, usually 3 days a week, weather permitting.” He lives on the third floor of an apartment building and repairs his bicycle on the balcony of his rental unit. However, the tenant argues that the landlord does not want him to repair or store his bicycle on the balcony.

A long-time resident of the apartment, he commenced a tenancy on January 15, 1998. Two pages of the tenancy agreement were submitted into evidence. Also submitted into evidence were photographs of the rental unit and the balcony from outside the building.

The tenant testified that the landlord has asked that he stop doing repairs on the balcony. The tenant, in his application, seeks the following: “I want [the landlord] to allow me to continue to use my balcony to do maintenance and repair on my bicycle as I have for the past 20 years. This would be in full compliance with my Tenancy Agreement which I signed on January 15, 1998.”

During testimony, the tenant argued that he has been allowed to repair his bicycle since he moved into the building, and that he was given verbal permission to do so by an employee of the landlord who signed the tenancy agreement. Further on in the hearing, after the landlord testified, the tenant also stated that the landlord had asked him not to store the bicycle on the balcony.

In his documentary evidence submitted, and referred to during testimony, there is written correspondence between the parties regarding the tenant’s storing of items on the balcony. In a letter dated January 9, 2018 from the landlord to the tenant, the landlord states that “this letter is to remind you that you are not permitted to store items on your balcony.” In the body of the letter, a clause in the tenancy agreement is cited, which reads as follows:

> Balconies
> Windows and balconies are not to be used for drying washing or Airing blankets, etc. Nothing shall be thrown from or placed or hung outside the windows; flower boxes or other articles are not to be placed on the balcony, rails or window ledges. Flower pots and/or containers will be permitted within your balcony floor area.

The copy of the tenancy agreement submitted into evidence by the tenant includes the above-cited clause. However, the clause as it reads within the tenancy agreement does not include a comma after the word “balcony” in the second sentence. That is, it reads as follows: “flower boxes or other articles are not to be placed on the balcony rails or window ledges.”

In his submissions, the tenant argued that it is his understanding that where there is a verbal agreement between a landlord and a tenant, that the substance of the agreement can, over time, become a permanent, or standard term of the tenancy agreement. Thus, because the landlord has permitted him to repair his bicycle for so many years, that it should be permitted now.

The tenant disputed the landlord’s position in respect of storing his bicycle. He understands that the landlord does not want him storing the bicycle on the balcony but submits that the definition of “storing” means for an extended period of time. Rather, it does not encompass the keeping of his bicycle on the balcony between rides.

The landlord’s agent testified, and wanted me to note for the record, that the landlord has “never once asked [the tenant] not to fix his bike” on the balcony. Rather, what they have asked him to do is to not store the bicycle on the balcony; correspondence between the parties would appear to support the landlord’s testimony in this regard.

In her submissions, the agent testified that the purpose behind the landlord’s request that the tenant not store the bicycle on the balcony is to ensure that the apartment building retains a crime free building status. While not explaining in depth what this means, I inferred from the agent’s testimony and from the correspondence that it is a designation given or granted by the police that speaks to the property’s crime-free nature. Presumably, not having bicycles on balconies would enhance the crime-free nature of the building.

Regarding the addition of a comma to the tenancy agreement, the agent took no particular position, rather, she reiterated that the landlord simply seeks to have the tenant not store (or keep) his bicycle on the balcony.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus

to prove their case is on the person making the claim.

Section 28(c) of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to "exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29."

In other words, a tenant may use any part of a rental unit for whatever purpose or activity he or she choses, so long as the purpose does not give rise to a cause to end a tenancy under section 47 of the Act. And, so long as the purpose or activity is not restricted by a term of the tenancy agreement, insofar as such a term is not unconscionable, a tenant may use any part of a rental unit for whatever purpose he or she choses. This includes the balcony of a rental unit.

In this case, the tenant wants to use the balcony of the rental unit to conduct maintenance on his bicycle and wants to use the balcony to keep his bicycle when he is not riding. The copy of the tenancy agreement submitted by the tenant does not prohibit either keeping or storing anything on the balcony. I note that the landlord's agent did not explain the additional comma in the clause that, if the comma had existed in the original tenancy agreement, would have prohibited keeping (or storing) items on the balcony. Indeed, the tenancy agreement language is not the most precise language that could have been drafted, and I should note that poor drafting on the landlord's part may not later be used to the detriment of a tenant.

Whether the keeping of a bicycle on the balcony falls within the definition of the verbs "store" or "storing" is a moot point: the tenancy agreement does not prohibit either. And, while I have no doubt that the landlord has good intentions in wanting to maintain its crime-free status, as any professional landlord would, if the requirements to obtain and maintain that status necessities the removal of bicycles from a rental unit's balcony then changes would need to be made to the tenancy agreement. Any changes would need to be made pursuant to section 14 of the Act, and, done so in writing.

Section 62(3) of the Act states that an arbitrator "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim that he is entitled to an order that the

landlord comply with the Act and the tenancy agreement. The tenant is entitled to use the rental unit's balcony to repair his bicycle, to keep his bicycle, or to store his bicycle.

Therefore, I order, pursuant to section 62(3) of the Act, that the landlord permit the tenant to store, keep, and otherwise carry out any activity necessary for the maintenance of the tenant's bicycle, on the rental unit's balcony, as is permitted by the tenancy agreement and by section 28(c) of the Act.

As the tenant is successful in his application, I grant him a monetary award of $100.00 for recovery of the filing fee. In full satisfaction of this award, I order that the tenant may retain $100.00 of his monthly rent for December 2018.

Conclusion

I hereby order, pursuant to section 62(3) of the Act, that the landlord permit the tenant to store, keep, and otherwise carry out any activity necessary for the maintenance of the tenant's bicycle, on the rental unit's balcony, as is permitted by the tenancy agreement and by section 28(c) of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 1, 2018

Residential Tenancy Branch