Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to sections 29 and 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both tenants (collectively, the "tenant"), the landlord, and the landlord's counsel appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant "JM" testified that he served the landlord with the Tenant's Application for Dispute Resolution hearing package (dispute resolution package) and accompanying evidence on November 29, 2018 by hand. On the basis of this undisputed evidence, I am satisfied that the landlord was served with the dispute resolution package and evidence pursuant to sections 89 and 90 of the Act.

The landlord testified that she disclosed a copy of her evidence package to the tenant, and the tenant confirmed receipt of the landlord's evidence. I confirmed that both parties were in receipt of the evidence provided by the respective parties.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered all documentary evidence submitted and all oral testimony of the parties, I will only refer to the evidence I find relevant in this decision. Not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

The parties agreed that the tenancy began on October 01, 2018, and that a security deposit of $937.50 was provided to the landlord and continues to be held by the landlord. The monthly rent was set at $1,875.00, and is payable on the first day of each month. A copy of a residential tenancy agreement was provided by the parties as evidence which confirms the information provided above.

The subject rental unit is a single-family detached home. The residential property on which the rental unit is located is situated such that it has an open front yard, and a backyard which is enclosed by fencing. The tenants and their children are the only occupants of the home.

Both parties agreed that, since the onset of the tenancy, it was determined that the landlord would be responsible for yard maintenance, which included, but was not limited to, maintaining the garden, lawn, and hedges. The parties provided as evidence email correspondence which depicted that the parties agreed to this arrangement. The testimony provided by both parties also confirmed the agreement described above.

The substantive issue of the tenants' application is the tenants' assertion that the landlord accesses the residential property far too frequently in order to tend to the tasks associated with maintenance of the garden, lawn, and hedges. The tenants also maintain that the landlord has entered the inside of the rental unit far too frequently as well.

The tenant “JM” testified that although the parties agreed that the landlord would provide maintenance services to the residential property, as described above, over the course of the tenancy, the landlord’s visits to the property had become excessive and unreasonable.

The tenant provided that the manner in which the landlord tends to the hedges, garden, and lawn is such that the work associated with the maintenance becomes drawn out over an extended period of time, and that the work could be completed much quicker if the landlord used a different approach, and tools that the tenant asserted would be more appropriate for the tasks.

Therefore, the tenant asserted, the landlord visits the residential property over a number of days to complete tasks that could otherwise be completed in a much short timeframe.

The tenant testified that the landlord has visited the rental property on over 20 occasions since the tenants moved-in to the rental unit (October 13, 2018) and the date on which the tenant filed for dispute resolution (November 22, 2018). The tenant further provided that the landlord visited the rental unit on 10 occasions in a 20-day period.

The tenant testified that part of the concern also centres around the landlord’s access to the inside of the rental unit, and is not limited to the landlord accessing the exterior residential property. The tenant provided that the landlord enters the rental unit far too frequently as well, and in a November 05, 2018 letter to the landlord, cited that the landlord has entered the rental unit on four occasions between the short period of October 13, 2018 to November 05, 2018. The tenant stated that on one occasion, the landlord attended the rental unit after 9:00 PM, and also attended the rental property twice in one day.

The tenant testified that the landlord does not comply with the Act and does not provide advance notice in writing of her intent to attend the residential property or enter the rental unit. The tenant provided that the culmination of the landlord’s actions constitute a violation of the tenants’ right to quiet enjoyment as outlined in section 28 of the Act.

The tenant testified that the landlord should be ordered to comply with the Act insofar as providing written notice before she attends the rental property, and that the landlord should reduce the frequency of her visits to the rental unit, and that any visit should comply with guidelines of the Act which govern a landlord’s right to enter a rental unit.

The landlord testified to refute the assertions made by the tenant with respect to her visits to the rental property being described as too frequent, and cited the frequency of visits being as high as 20 occasions as being an exaggeration. The landlord provided that her visits to the rental property have either been in accordance with the Act, or have been carried-out in adherence to prior agreements made with the tenants, such as to undertake previously agreed-upon inspections and repairs, or to complete exterior maintenance.

The landlord provided that she did attend the rental property on some of the occasions cited by the tenants. The landlord denied that she attended on as many as 20 separate occasions. The landlord agreed that she did attend the residential property to undertake work with respect to yard maintenance and gardening, but that those occasions were limited to the exterior of the property and did not result in her entering the inside of the rental unit.

The landlord testified that the nature of the yard maintenance and gardening is such that it cannot be limited to one season and that it cannot be completed in a short period of time, such that it can be readily and quickly completed.

The landlord described that some of the gardening requirements are such that they necessitate maintenance in the winter months. As an example, the landlord described that the hedge at the rear of the property is a 140-foot “living fence”, which is approximately six feet wide, and requires regular maintenance.

The landlord testified that the nature of the garden, and the routine maintenance it requires, is such that, if not properly maintained, could lead to neglect and compromise its condition and state. The landlord provided that she had always maintained the garden and yard herself to ensure that they were kept in good condition.

The landlord testified that she is employed and that as a result of having to work certain hours, she tends to the garden and the yardwork in her spare time. The landlord also cited that on some of the dates on which the tenants asserted she attended the property, she was actually at work, and therefore, could not have been on the property.

The landlord further provided that she undertakes the garden and yard work at a casual pace, and ensures that the work is of a suitable standard. The landlord challenged the tenants’ assertion that a gardener could be hired to complete the work in a shorter amount of time. The landlord asserted that as the owner of the property, she is under

no obligation to hire a third party to complete work that she is qualified and able to do herself.

The landlord testified that understood that she did not need to give notice to access the yard of the residential property, as she remains on the exterior of the residential property while doing yard work and gardening. The landlord further provided that her visits to the exterior of the property are for yard work and gardening which the parties agreed that she would provide and that her visits are in adherence to that agreement.

With respect to entering inside of the rental unit, the landlord testified that she has never entered the rental unit in violation of the Act. The landlord provided that she has entered the rental unit on only four occasions since the beginning of the tenancy, and that three of those occasions were pursuant to previously agreed-upon meetings scheduled with the tenants to complete inspections and a walk-throughs of the rental unit, and to complete repairs.

The landlord testified that the fourth occasion on which she entered the rental unit adhered to the rules set out in the Act. The landlord provided that she is not in violation of the Act, as she either adheres to the Act when the need arises to enter the rental unit to do repairs or inspections, and that her visits to the exterior of the property are in accordance with the Act or as a result of an agreement with the tenants, as described above.

Analysis

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim (and bearing the burden of proof) has not met the burden on a balance of probabilities and the claim fails.

Both parties have provided documentary evidence, along with their respective testimony and submissions. However, the question of what occurred is not an easy determination

to make when weighing conflicting verbal testimony before me, particularly as the burden of proof rests with the party bringing for the application.

I find that the evidence and testimony provided by both parties was reliable and depicted a version of events that was equally probable. However, the test that I must apply in this matter is a balance of probabilities, which is to say, that it is more likely than not that, based on the evidence and testimony, that events occurred in a certain way as opposed to another.

Although the tenants' evidence and submissions were considered on merit, in weighing the evidence and testimony from both parties, I find that the tenants had the burden of providing *definitive evidence and testimony* and that the tenants did not meet that burden on all of the issues submitted as part of their application.

In the matter before me, I find that, on a balance of probabilities, the tenants did not provide sufficient evidence to demonstrate that the landlord has undertaken action in violation of the Act that would leave it open to the tenants to have an order established to restrict the landlord's entry to the rental unit or residential property.

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* and Residential Tenancy Policy Guideline that are applicable to this application before me. I will provide the following findings and reasons when rendering this decision.

Section 1 of the Act provides the following definitions:

> **"rental unit"** means living accommodation rented or intended to be rented to a tenant;
>
> **"residential property"** means
> (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
> (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
> (c) the rental unit and common areas, and
> (d) any other structure located on the parcel or parcels;

Section 28 of the Act provides the following:

Protection of tenant's right to quiet enjoyment

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.

Section 29 of the Act provides the following:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

With respect to the issue of the tenants asserting that the landlord excessively attends the exterior of the property, I find that the tenants have not sufficiently proven that the landlord’s actions in this regard are a violation of the Act, and will therefore not order restrictions placed on the landlord’s ability to access the residential property.

The landlord's access to the residential property is pursuant to an agreement made between the parties at the onset of the tenancy to permit the landlord to undertake yard work and gardening. As part of the agreement, the parties did not implement and agree upon any terms which limit or restrict the frequency with which the landlord undertakes these tasks.

Additionally, section 29 of the Act provides guidelines which govern the landlord's ability to enter the rental unit, but such guidelines do not limit the landlord's ability to access the residential property.

Residential Tenancy Policy Guideline #7 and schedule 11 of the *Residential Tenancy Regulation* provide, in part, the following guidelines with respect to the landlord's ability to enter the rental unit:

> (2) The landlord may enter the rental unit only if one of the following applies:
> (a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
>
> (i) the purpose for entering, which must be reasonable, and
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
>
> (b) there is an emergency and the entry is necessary to protect life or property;
> (c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
> (d) the tenant has abandoned the rental unit;
> (e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;
> (f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.
> (3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).

I find that the ability of a landlord to access the residential property is not governed or limited by the provisions of Residential Tenancy Policy Guideline #7 and schedule 11 of the *Residential Tenancy Regulation*, as detailed above. By accessing the residential property, the landlord is accessing the exterior of the property and is not entering the rental unit itself. Furthermore, the landlord is accessing the residential property for a

stated and reasonable purpose pursuant to the agreement between the parties that the landlord will continue to have the ability to maintain the yard and garden.

The provisions of Residential Tenancy Policy Guideline #7 and schedule 11 of the *Residential Tenancy Regulation*, as well as section 29 of the Act do provide strict conditions outlining the manner in which a landlord can access the rental unit itself. After considering the testimony of the parties, I find that the tenants have not provided sufficient evidence to prove that the landlord violated the terms of the Act with respect to entry into the rental unit.

The landlord testified that she accessed the rental unit of four occasions, and that those occasions were pursuant to previously agreed-upon inspections to be completed, whereby the landlord had the consent of the tenants to enter the unit. On balance, I find that the tenants did not provide sufficient evidence to refute the landlord's testimony that her access to the rental unit did not violate the terms of the Act, as the onus to do so was on the party bringing forth the application.

While I find that the landlord's access to the rental unit and the residential property does not constitute a violation of the Act, I will address the tenant's concern with respect to the frequency of the landlord's visits. Section 28(b) and 28(d) of the Act provide, in part, that the tenants are entitled to quiet enjoyment free of unreasonable disturbance and free from significant interference. Residential Tenancy Policy Guideline #7 also provides that a landlord may access the rental unit for a reasonable purpose, but that a 'reasonable purpose' may lose its reasonableness if carried out too often."

I find that if a party to a tenancy determines that a landlord has violated the provisions of quiet enjoyment, as detailed in the Act, that party can seek remedy or compensation as provided under the Act and Residential Tenancy Policy Guideline #6. However, I find that the tenants have not sought any such relief or compensation as part of the application before me.

Therefore, with respect to the tenants assertion that the landlord's frequency of access to the rental unit constitutes a breach of the Act, I will not place any restrictions on the landlord's access to the rental unit, as the tenants have not proven that the landlord's access to the rental unit were too frequent or a violation of the Act, nor have the tenants sought compensation or other relief as provided under the Act.

I will remind the landlord to strictly adhere to the provisions of section 28 and 29 of the Act with respect to entry into the rental unit and the tenant's right to quiet enjoyment.

Conclusion

I decline to set additional limits or restrictions on the landlord's right to enter the rental unit beyond the limitations and restrictions that are already inherently imposed on the landlord under the provisions of the Act.

The landlord is cautioned to strictly adhere to the provisions of the Act with respect to entry to the rental unit.

As the tenants were not successful in their application, the tenants are not entitled to recover the filing fee for this application.

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: February 06, 2019

Residential Tenancy Branch