



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

On January 24, 2019, the Tenants applied for a Dispute Resolution proceeding seeking an Order for the Landlord to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing. The Landlord attended the hearing as well, with H.P. attending as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by placing it on the Landlord’s door on January 26, 2019 and the Landlord confirmed that he received this package. While service of this package does not comply with Section 89 of the *Act*, as the Landlord has received this, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she did not submit any documentary evidence for consideration on this file.

The Landlord advised that he did not serve his evidence to the Tenants. The Landlord was required to serve evidence to the other party as per Rule 3.15 of the Rules of Procedure. As he did not do so, I have excluded the Landlord’s evidence and will not consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 9, 2016. Both parties disputed the amount of rent owed per month; however, they both agreed that rent was due on the first of each month. A security deposit of \$800.00 was paid as well.

The Tenant stated that she lives in one side of the duplex and that there is a cat urine smell that emanates from the other half of the duplex. She also advised that there is an odour of fermented apples, cannabis, and meth coming from that other side. She stated that she has contacted the police approximately 10 times regarding the activities of the neighbours and that on one occasion, the police kicked in the neighbour's door.

She submitted that she has brought these issues up with the Landlord numerous times and she did request in writing on January 10, 2019 that the Landlord rectify these issues; however, nothing has changed. She stated that her family does not live in the downstairs portion of the duplex as it is unbearable to live there. She advised that the neighbours party, play loud music, get high, and do drugs. She also stated that she does not know what Sections of the *Act* she is requesting that the Landlord comply with.

H.P. advised that Tenant G.P. is difficult to deal with as he is combative, belligerent, and rude. He relayed a situation where the municipality ticketed the Landlord as there was an accumulation of refuse on the property. When the Landlord presented G.P. with the by-law infraction ticket, it was ripped up in front of him. H.P. stated that the neighbours did not have any pets so there could not have been a cat urine smell. He advised that the neighbours have two kids and he assumes that the neighbours may smoke pot, but there is no use of meth or crack by these people. He stated that these neighbours have been tenants for approximately 13 years and the Landlord has not had any issues with them or complaints against them in the past, until now. As well, he stated that he is not aware of the door being kicked in by the police.

Analysis

Upon consideration of the evidence before me, my reasons for making this decision are below.

With respect to the Tenant's Application, I find it important to note that the party making the Application bears the onus to prove the claims that they are alleging. While I have before me testimony with respect to the issues that the Tenant believes affect her, she has not provided any documentary evidence to substantiate her position. Furthermore, she was not able to explain what Sections of the *Act* have been breached or under which Sections she is requesting that the Landlord comply with. Consequently, I am not satisfied that the Tenant has established the grounds for her claim in this Application. As such, I dismiss the Tenants' Application without leave to reapply.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution 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: March 11, 2019

Residential Tenancy Branch