



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. I find that the landlord was served in accordance with the Act.

The parties testified that there is another Residential Tenancy Branch hearing scheduled between the parties at a future date in a different Residential Tenancy Branch file. The hearing number for this other file is referenced on the first page of the decision.

Preliminary Matter: Admissibility of Tenant's Evidence

The tenant testified that she placed her evidence in the landlord's mailbox on approximately July 3, 2019 which the landlord testified that he received on July 5, 2019. The evidence was filed with the Residential Tenancy Branch under the parties' upcoming hearing regarding possession of the rental unit. The landlord objected to the admissibility of this evidence.

The *Residential Tenancy Branch Rules of Procedure* 3.14 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find that the landlord was not served in accordance with the *Rule of Procedure* stated above and for

this reason. In addition, the evidence was filed under a different Residential Tenancy Branch hearing file.

In these circumstances, I find that the acceptance of the tenant's evidence in this matter would prejudice the other party or result in a breach of the principles of natural justice. Accordingly, I have excluded the tenant's evidence and I have not relied on these documents to form any part of my decision.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Background and Evidence

The landlord testified that the tenancy three to four years ago whereas the tenant testified that the tenancy started five to six years ago. The tenant testified that the monthly rent is \$600.00 and she paid a \$250.00 security deposit.

The landlord testified that the tenant resides in a basement suite in a residential house. The landlord's family resides in the upstairs portion of the property. The landlords have another tenant residing in a second adjacent basement rental suite.

The tenant testified that the landlord and the landlord's family have been making harassing and offensive comments to the tenant. The tenant stated that the landlord's family has pounded on the floor and they made repeated lewd, sexually harassing comments. The tenant testified that she has made police reports regarding the landlord's conduct.

The landlord denies making any such offensive or harassing comments. The landlord testified that his children live with him in the property and he would not permit his family members to make lewd and offensive comments in front of his children.

The landlord also presented a supportive written statement from the tenant in the adjacent basement rental suite. The statement said that she can hear sounds through the walls but she has never heard the landlord raise his voice or make derogatory comments. The statement said that she occasionally heard some noise from upstairs but it was just regular household noise. The statement did however say that she heard the tenant yell and bang on the ceiling multiple times.

Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure* ("RTB Rules"), Rule 6.6 states that the applicant, in this case the tenant, has the onus of proof to prove their case on a balance of probabilities. This means that RTB Rule 6.6 requires the tenant to prove that, more likely than not, the facts occurred as claimed in order to prevail in her claim.

In this matter, both the tenant and the landlord provided conflicting evidence regarding this matter. The tenant claimed that the landlord has been making lewd and harassing comments and the landlord denies this. However, the landlord has corroborated his testimony with the testimony of the neighbouring basement tenant whereas the tenant has not provided any corroborating evidence.

In the absence of corroborating evidence in support of the tenant's testimony, I find that tenant has not provided sufficient evidence to establish on the balance of probabilities that the landlord has been harassing her as she has claimed. Accordingly, I dismiss the tenant's application.

Conclusion

I dismiss the tenant's 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: July 08, 2019

Residential Tenancy Branch