



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: AAT, OLC, RR

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord allow access to the rental unit for her guests.
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order for the reduction of rent in the sum of \$2100 for repairs, services or facilities agreed upon but not provided. .

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlords. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that the landlord allow access to the rental unit for the tenant's guests.
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. Whether the tenant is entitled to an order for the reduction of rent for repairs, services or facilities agreed upon but not provided.

Background and Evidence:

The tenancy began on December 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$750 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy.

The rental property is on acreage in a rural area. There is a long road from the main street to the house. The landlord lives in the upstairs portion. There is another tenant living in the upstairs area. The tenant rents a suite in the basement area.

The tenant gave the following evidence:

- The landlords are constantly harassing her about her guests. The landlord has accused her of criminal activity.
- It is extremely embarrassing for her to invite guests over. The landlord stops them and has told them they are not welcome.
- Her guests do not wish to visit her because of the hassles they face from the landlords.
- The landlord stopped male visitors. The landlord does not stop the upstairs tenant from having visitors.
- The tenant produced a number of video and audio recordings. On video is date stamped January 19, 2019 and a second video was dated stamped January 24, 2019. They show the landlord knocking on her door late at night around midnight and demanding to see who was present with the tenants. In one of the videos a heated argument between the tenant and the landlord resulted. The tenant also produced two audio videos. The tenant testified there are other videos that she did not produce.
- The landlord threatens to lock the gate which would prevent her friends from leaving.
- The upstairs tenant has harassed her and the landlord has not done anything about it.
- The police have been called on a number of occasions. The actions of the landlord in interfering with access of her guests have caused her significant embarrassment and stress.
- The tenants testified she seeks compensation in the sum of 20% per month of the rent for 7 months for the landlord restricting access for her guests and an additional 20% per month for 7 months for the loss of quiet enjoyment, stress and depression caused by the landlord preventing her guests from having access to her rental unit.

The landlords gave the following evidence.

- The rental property is in a rural area and located on acreage. The landlords are close to 60 years of age. They are extremely concerned for security and safety when they see people wandering on their property especially late at night.
- From time to time strangers are knocking on their door late at night requesting to see the tenant.
- They allow the tenant's guest access once the guests have identified who they are and who they are visiting.
- The tenant recently hit the upstairs tenant and was arrested for assault.
- The police have been called on at least 15 occasions.

The tenant responded stating the upstairs tenant provoked her and as a result she punched her in the eye. There was no agreement relating to a curfew. The landlord allows stranger on the property with offers of free fired would.

The landlord has come to her rental unit at night on at least 7 or 8 occasions to questions who was present. On many other occasions the landlord has stopped her guests in the yard.

Law

Section 30(1) of the Residential Tenancy Act provides as follows:

Tenant's right of access protected

30 (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant.

Section 28 of the Residential Tenancy Act provides as follows:

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.

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Analysis

After carefully considering all of the evidence, the law and the submissions of the parties I made the following determination:

- Section 30(1) provides that a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property, or a person permitted on the residential property by that tenant.
- I determined the landlords have not unreasonably restricted access to guest when they question strangers on the property where the tenant is not with them. At that stage they are strangers. Given the rural location and safety concerns I determined the landlords are not acting reasonably in questioning them. However, once the strangers have indicated they are there to visit a tenant the landlord must not prevent them from seeing whether the tenant is at home so that she can confirm they are guests and that she is permitting them into her rental unit.
- I determined the landlord is acting unreasonably in knocking on the tenant's door late at night to see who is with the tenant unless there is evidence to suggest there is an emergency or the tenant needs help. The landlord does not have a right to unilaterally set a curfew or to require the guest of the tenant to leave.
- I determined that on at least four occasions the landlords have attempted to interfere with tenant and her guests in this manner.
- The tenants seeks compensation of \$150 per month for 7 months for the landlord restricting access to her guests and a further \$150 per month for the breach of the covenant of quiet enjoyment and because the landlord has failed to provide services or facilities agreed upon but not provided. The tenant failed to prove that they claims are separate claims as they relate to the same alleged breaches.
- I determined the tenant is entitled to compensation in the sum of \$200 for the times the landlords attempted to force the tenants' guests to leave when it was clear the tenants are allowed them into her rental unit.
- The tenant is not entitled to compensation for the times the landlord has questioned someone who has come onto the rental property and it is not clear they are guests of the tenant.
- The tenant alleges the landlord breached the covenant of quiet enjoyment. I determined the videos presented by the tenant while the landlord breached the Act in knocking on the door late at the night the tenant's unreasonable conduct in interacting with the landlord caused an escalation in the dispute

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$200 for the reduced value of the tenancy. All other monetary claims are dismissed without leave to re-apply. I further ordered that the landlords comply with section 30(1) of the Residential Tenancy Act.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 11, 2019

Residential Tenancy Branch