



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC

Introduction:

The Application for Dispute Resolution filed by the Tenant(s) seeks an order that the landlord comply with the Act, Regulations and/or tenancy agreement.

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 served on the landlords by mailing, by registered mail to where the landlords reside on June 9, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the Tenant(s) are entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?

Background and Evidence:

The tenancy began on October 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1900 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$950 at the start of the tenancy.

The Application for Dispute Resolution filed by the Tenant raises the following complaints about the landlord(s):

“trying to inspect less than 30 days from prior inspection -trying to dictate how I live. -lying about the state of my home during inspections -trying to serve notices

via email and phone -making accusations about my parenting and threatening police because of a dispute with neighbour who is a friend of his. -taking photos during inspections when I was not home without prior disclosure he was doing so as per the privacy commission of Canada's rule - harassment and bullying"

Both sides have uploaded a large number of documents including photos, e-mails, letters etc.

The tenancy began on October 1, 2019. The landlords conducted their first inspection on January 31, 2019. The landlord did not find the condition of the rental unit acceptable and proposed a follow up inspection. Initially it was set for February 16, 2019. However the parties agreed to an inspection on February 26, 2019.

The landlord posted a Notice of Inspection on April 19, 2019 expressing concerns about deficiencies from the previous inspections. An inspection was conducted on April 23, 2019. Again, the landlord did not find the condition of the rental unit satisfactory and wrote a letter to the tenant dated April 29, 2019 that raised the following concerns:

- Matters from the previous February 26, 2019 inspection continue to pose health and safety concerns:
 - Filth, garbage, recycling throughout the premises including but not limited to under furniture, under beds, on the floor, in the kitchen, in closets, in laundry room and in the family room.
 - Garbage and recycling in bags in the front and along the side of the house.
- Matters which were identified in his inspection on April 23, 2019.
 - Empty pop cans and other recyclable materials including pop cans, pizza boxes)
 - Trash bags and broken table at the side of the house to be removed.
 - The floor in the kitchen and other floors are filthy
 - Food particles and trash are located in various areas of the house.
 - The bathroom is filthy
 - The lawn has not been mowed.
 - One cat is now living in the rental unit. The Addendum allows a medium cat or dog but only after discussion with the landlord. Until the issues of cleanliness have been fully and consistently address we ask that you refrain from having a cat or dog.
- The house will be listed for sale next month

The tenant has responded to the actions of the landlord including a letter dated April 22, 2019 which states that she has contacted the Residential Tenancy Branch and they told her that during inspections a landlord cannot

- Tell the tenant how to do her laundry to his liking
- Dictate where recycle between pick up days has to be stored in the house
- Tell her what to do and how to store her own personal property
- Criticize the cleanliness of her house
- Move her personal property.
- includes the following concerns;

The tenant testified that when the landlord inspects he is constantly complaining that the house is not clean enough and that the state of the home is not acceptable. He is harassing her in the form of e-mails and trying to serve notices via email and phone. He is taking photos during inspections when I was not home without prior disclosure. The conduct of the landlord amounts to harassment and bullying”

The tenant testified that on one occasion the landlord has gone through her drawers to get access to a tool to gain access to her son’s locked bedroom. He has talked to her 13 year old son without her permission.

Several other inspections were conducted by the landlord including the following.

- An Inspection held on May 21, 2019 with a follow up letter dated May 31, 2019.
- An inspection held on June 5, 2019 with a follow up letter dated June 9, 2019.
- An inspection held on June 19, 2019 with the realtor
- A warning letter dated June 27, 2019.
- An inspection on July 8, 2019

The landlords served a one month Notice to End Tenancy for cause on July 10, 2019.

The landlords rely on a letter from his realtor after the June 19, 2019 inspection that included the following:

“I do have one concern, the lack of cleanliness, especially the sticky floors everywhere, of the Lovell side unit will deter some potential buyers. This type of investment property is typically bought by someone new to buying rental properties and they tend to look at the property as if they’d be living there. If you could appeal to the tenant to wash the floors and generally clean up the suite it would go a long way to getting the property sold. It’s actually in the tenant’s best

interest as the impression they leave the new owner with will affect their relationship.

The landlord testified that the inspections of the property are necessary to protect the property from unreasonable health, cleanliness and sanitary conditions. In particular there is a serious risk of rodents and infestation of flies. The lack of cleanliness has put the sale of the house in jeopardy.

Analysis

Section 29 of the Residential Tenancy Act provides as follows:

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).

After carefully considering all of the evidence and the submission of both parties I made the following determinations:

- The parties have significant differences of opinion as to what amounts to the standard of cleanliness required by the section 32(2) to (4) of the Act which provides as follows:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear..

No doubt this will be an issue should the tenant dispute the one month Notice to End Tenancy served on July 10, 2019.

- I determined the landlord breached Section 29 of the Residential Tenancy Act. I find that the landlord number of inspections conducted by the landlord exceeds the one inspection per month. I do not accept the submission of the landlord that a follow up inspection is part of the original inspection.
- Further, I do not accept the submission of the landlord that the condition of the rental unit amounts to an “emergency” thus giving the landlord the right to enter to protect life and property. I determined the lack of cleanliness and other problems experienced by the landlord do not qualify as an emergency giving the landlord the right to ignore section 29(2) limiting inspections to once a month.
- However, I determined the landlord did not breach the Act with the follow up inspection in February as the tenant consented to that inspection.
- I do not accept the complaint of the tenant that the landlord acted improperly when he communicated with her son. This occurred on one occasion. The

tenant was at home and would not answer the door. The tenant's complaint is without basis.

- I do not accept the submission of the tenant that the acted improperly when he gave her a number of letters expressing concern about the condition of the rental unit and identifying the particular issues in question.
- The validity of the landlord's concern with respect to the cleanliness is not before me. No doubt that issue will be canvassed if the tenant applies to cancel the one month Notice to End Tenancy. However, I do not accept the submission that the landlord is at fault for expressing these concerns in writing.

Conclusion:

In conclusion I ordered that the landlord comply with section 29 of the Residential Tenancy Act by limiting inspections to once a month or otherwise provided by the Act. I further ordered that the landlord comply with section 29 of the Act by giving proper notice when conducting monthly inspections.

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 21, 2019

Residential Tenancy Branch