



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, FFT

Introduction

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

- An order requiring the landlord to comply with the Act, Residential Tenancy Branch Regulations (the Regulations), and/or tenancy agreement, pursuant to section 62;
- An order to restrict or suspend the landlord's right of entry, pursuant to section 70; and
- Recovery of the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord attended. The landlord was assisted by agents CC and DC. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of the notice of hearing and evidence (the materials) presented by the parties was confirmed. In accordance with sections 88 and 89 of the Act, I find the parties were duly served with the materials.

Issues to be Decided

Is the tenant entitled to:

1. An order requiring the landlord to comply with the Act, the Regulations and/or the tenancy agreement?
2. An order to restrict or suspend the landlord's right of entry?
3. An authorization to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained to the attending parties it is their obligation to present the evidence produced.

Both parties agreed the tenancy started in June or July 2016, there is no written agreement. Monthly rent is \$2,100.00 and 50% of the utilities, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,050.00 and still holds it in trust. The tenant is in arrears for the rent payment of May 2020 and the utilities payment that was due in March 2020. The rental unit is the upper unit of the rental building. There are two other rental units in the basement.

The tenant affirmed he has exclusive use of the back yard and the garage. The tenant affirmed the landlord entered the back yard without providing a notice of entry and discarded the tenant's belongings which were in the backyard on February 28, 2019. The tenant affirmed on March 01, 2019 he sent a letter to the landlord listing all the objects (vacuum cleaner, stainless steel table, awning, tools, patio table with benches, battery charger, sweeper, construction table, buckets, and garbage bin) that were discarded by the landlord, and how much each object is worth. The tenant asked for a payment of \$2,598.00. A copy of the letter was submitted into evidence, as well as individual price quotes of the objects.

The tenant affirmed when he delivered the letter asking for the \$2,598.00 payment he received a one month notice to end tenancy. A copy of the notice was submitted into evidence.

The tenant submitted into evidence text messages with the landlord. The landlord informed the tenant: "I told you I'll give you \$500 if you feel like I threw something away that was important. But please move out end of this month. Thanks." The tenant did not move out.

In the text messages the tenant affirmed the landlord entered the backyard without his permission. The landlord disagrees with the tenant about the backyard and affirmed the backyard is a common area.

The tenant affirmed he is concerned about the landlord discarding his objects again. However, the tenant affirmed the landlord has not entered his rental unit since March

2019. The tenant also affirmed the landlord cut the electricity in March 2020 as a way to pressure him to pay for the electricity bill.

The tenant affirmed he did repairs in the rental unit and the landlord owes him \$2,113.00 for the repairs. The tenant submitted into evidence a ledger listing ten repairs and the costs for materials and labour.

The tenant affirmed he should pay only 33% or 40% of the utilities because his parents and his brother no longer live with him and currently there are only two occupants in his rental unit. The two units in the basement have a total of 9 occupants.

The tenant's objects that were discarded in February 2019 were outside the tenant's rental unit and the landlord only cleaned the garbage. The landlord affirmed he did not cut the electricity of the rental unit.

The landlord submitted into evidence photographs of the tenant blocking the passage to the back yard with a gate and a dog.

The landlord affirmed the back yard is the passage the lower unit tenants use to reach the garbage disposal area. The landlord affirmed the tenant parks his food truck and connects it to the electricity of the rental unit. The tenant affirmed the lower unit tenants can ask him permission to pass by the backyard anytime.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant is seeking an order for the landlord to comply with the Act, the Regulations or the tenancy agreement and for an order to restrict or suspend the landlord's right of entry. The tenant did not apply for a monetary order.

Order for the landlord to comply

The tenant is seeking for an order for the landlord to comply with the tenancy agreement to reduce the amount of utilities the tenants pays from 50% to 33 or 40%.

I find that the reduction in the number of occupants in the tenant's rental unit is unrelated with the landlord. The tenant now has less occupants in his rental unit because his family members left. Furthermore, despite the fact that the two lower units only pay 50% of the electricity, the tenant connects his food truck to the electricity of the rental unit.

Section 14(1) of the Act states: "A tenancy agreement may not be amended to change or remove a standard term."

As such, I find that the percentage the tenant pays was agreed upon the beginning of the tenancy and the tenant does not have the right to change this payment percentage.

Order to restrict or suspend the landlord's right of entry

The tenant is seeking for an order to suspend the landlord right of entry in the rental unit, including the backyard.

Sections 70 and 29 of the Act states:

70 (1)The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29

[...]

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).

The tenant affirmed he has exclusive usage of the backyard and the landlord entered the back yard to discard his objects. The tenant also affirmed the landlord cut the

electricity to pressure him to pay the outstanding electricity bill. The landlord rejected both affirmations.

Residential Tenancy Branch Policy Guideline 01 states:

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

The text messages produced as evidence indicate both parties do not agree about the exclusive right of usage of the backyard.

The parties offered conflicting verbal testimony and documentary evidence regarding whether or not the tenant has exclusive use of the backyard. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The applicant did not provide any documentary evidence besides the conflicting text messages and testimony to support his claim. The applicant did not call any witnesses.

I have carefully reviewed the testimony and text messages offered by both parties, and I find that the tenant has not provided sufficient evidence to prove that he has the exclusive use of the backyard of the multi-family dwelling rental unit nor that the landlord cut the electricity. Furthermore, the tenant affirmed the landlord has not entered his rental unit since March 2019. Thus, the tenant is not entitled to suspend or restrict the landlord's right to enter the rental unit.

As the tenant did not apply for a monetary order, I will not consider his request for reimbursement for repair related expenses.

The tenant must bear the cost of his filing fee, as the tenant was not successful.

Conclusion

The tenant's application is dismissed.

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: May 27, 2020

Residential Tenancy Branch