



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0741259 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the filing fee.

The tenant, the owner, and the landlord's agents attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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 that the landlord comply with section 28 of the Act?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The evidence showed this tenancy began on April 1, 2016, current monthly rent is \$927, and the tenant paid a security deposit of \$437.50.

The rental unit is an apartment in a multi-level, multi-unit building.

The tenant's application identified several matters of concern for the tenant. At the hearing, the tenant confirmed that many issues have been resolved; however, there were three issues remaining to be addressed:

1. Order that the building manager, PJ, not leave debris on her patio;
2. Order that PJ stop slamming the utility room door by the tenant's rental unit; and
3. Order that PJ stop following her around the residential property.

During the hearing, the tenant said that the landlord had addressed the issue with her patio, as they now have someone else to provide grass cutting and landscaping services. Since then, there has not been landscaping debris flying onto her patio after a grass cutting, as it has been when PJ cuts the grass, according to the tenant.

As to the issue regarding the slamming door, the landlord/owner, FP, agreed to attach a door closer to the door leading to the utility/service door, so that it does not slam when closing. FP said he was also open to putting in a surveillance camera in the building.

As to the third issue, the tenant submitted her privacy has been disrupted and that she has been subjected to bullying from PJ. The tenant submitted that PJ, who is a resident building manager, has followed her around the building when she comes home, as well as watching her from her windows or deliberately entering the laundry room when she is there, pretending she had something to do other than laundry. The tenant submitted that PJ has yelled at her and threatened her with eviction.

Response of PJ –

PJ said that she has never followed the tenant around and as building manager, she has to access the service room multiple times in a day and week. PJ said that especially now during Covid-19, she has to go into the service room more frequently for cleaning supplies due to the extra cleaning required around the premises.

PJ submitted that as the building manager, she is entitled to be in the common areas as part of her job and denied stalking or following the tenant.

PJ denied ever purposefully slamming the service room door, but sometimes she had had supplies in both hands and was not able to properly close the door.

PJ said that the tenant comes to her door and has pounded on it, using an expletive towards her.

Settled Agreement on the door slamming issue

During the hearing, the parties agreed to a resolution on the door slamming issue.

1. The landlord agrees to purchase and install a door closer on the utility/service room door.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The tenant outlined three remaining issues, at the time of the hearing.

The door slamming issue was resolved by mutual settlement, as outlined above.

This settlement agreement on this issue was reached in accordance with section 63 of the *Residential Tenancy Act*. The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act. Should either party violate the terms of this settled agreement, the tenancy agreement or the Act, it is open to the other party to take steps under the Act to seek remedy.

The tenant confirmed that the issue with landscaping debris coming onto and being left on her patio was resolved prior to the hearing, as the landlord had hired someone other than PJ to provide landscaping services.

The only remaining issue outstanding was the allegation that PJ has been following the tenant around the residential property, depriving her of her right to quiet enjoyment.

A tenant's right to quiet enjoyment is protected under section 28 of the Act, which reads 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.

A party that makes an application alleging a loss of quiet enjoyment has the burden to prove their claim, on the balance of probabilities. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the evidence and hearing from the parties, I find the tenant has submitted insufficient evidence to prove that PJ has deprived the tenant of her loss of quiet enjoyment. While the tenant has alleged that PJ, a landlord's agent, has been stalking and following her, PJ has denied that is the case.

I do find it reasonable that PJ would be out and about the residential property as she is the building manager and, in that capacity, she is likely to encounter or to follow the tenant while attending to her job duties.

I do not find there is any independent evidence to prove that PJ's conduct interferes with the tenant's right to quiet enjoyment.

As I have found that the tenant submitted insufficient evidence to support her claim on the remaining issue, on a balance of probabilities, for the reasons cited above, I dismiss the tenant's request that I order PJ not to follow the tenant around the residential property.

As one issue was settled, one issue had been resolved prior to the hearing, and one issue was dismissed, I decline to award the tenant recovery of her filing fee.

Conclusion

The parties reached a settlement on one of the three issues confirmed by the tenant at the hearing.

A second issue was resolved by the landlord prior to the hearing.

The third remaining issue was dismissed, due to insufficient evidence by the tenant.

The tenant's request for recovery of the filing fee 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: June 17, 2020

Residential Tenancy Branch