



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SCOTT AVENUE APARTMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

On May 18, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking an order for the Landlord comply with the Act, Regulation, or Tenancy Agreement. On May 29, 2020 the Tenant uploaded an amendment to the application to include a claim for money owed or compensation for damage or loss and to suspend or set conditions on the Landlords right to access the unit.

The matter was set for a conference call hearing. The Tenant and an agent for the Landlord appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The first 25 minutes of the one-hour hearing was needed to deal with preliminary matters relating to amendments to the application and the exchange of evidence.

The Residential Tenancy Branch (“the RTB”) website allows an applicant to apply for dispute resolution online. The website contains information for applicants applying online; including information about preparing evidence and requirements for preparing digital evidence. The website provides information about the RTB Rules of Procedure

that are in place to ensure a fair, efficient and consistent process for resolving disputes for Landlords and Tenants.

On May 18, 2019, the Tenant submitted an Application for Dispute Resolution under the *Act*. At the time of the application, the Tenant provided six files amounting to 10 pages of documentary evidence in support of her application. The Tenant testified that she served this application and evidence to the Landlord on May 22, 2020.

RTB Rule of Procedure 3.14 requires that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

On June 1, 2020, the Tenant used the Residential Tenancy Branch online application system ("the RTB OAS") to upload amendments to her application. The Tenant added a monetary claim and also amended the application to change the name of the Landlord. Furthermore, on June 1; June 5; June 13; and June 14 the Tenant uploaded 144 files to the RTB OAS. The uploaded files amount to 158 pages of documentary evidence.

The Tenant testified that she served the Landlord with notice of her amended application by email sent on June 1, 2020. The Tenant testified that she served the Landlord with a copy of her documentary evidence on the dates she uploaded the evidence to the RTB OAS.

The Landlord testified that he received notice of the amended application on June 5, 2020. The Landlord testified that he received 85 pages of the Tenants evidence on the morning of the hearing. Due to only just receiving the majority of the Tenants evidence, the Landlord was opposed to the acceptance and consideration of this evidence.

The Landlord uploaded 19 pages of documentary evidence into the RTBOAS on June 9, 2020; six days prior to the hearing. The Tenant stated that she is opposed to the acceptance of the Landlord's documentary evidence.

I find that both the Tenant and Landlord did not exchange their documentary evidence in accordance with the RTB Rules of Procedure. Accordingly, the late evidence from both parties is excluded from this hearing.

The Tenant was offered an opportunity to withdraw her application in full with leave to reapply or to proceed with the hearing based on her Application and 10 pages of evidence received by the Landlord on May 22, 2020.

The Tenant wanted to proceed. The hearing proceeded on the Tenant's application for an order that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

Issue to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on December 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$750.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$375.00.

The Tenant testified that she wants the Landlord to uphold her right to quiet enjoyment of the rental property. The Tenant submitted that the Landlord has breached her right to quiet enjoyment.

The Tenant provided testimony that due to the covid pandemic she informed the Landlord that she would not be able to pay all the rent owing for the month of April 2020. She testified that she was working for the Landlord doing some cleaning, however, her pay was being cut and she was not paid in accordance with their agreement.

The Tenant provided testimony regarding conflict she had with the Ms. T. K. the sister of the resident Landlords and Ms. T.M. another occupant of the rental property.

The Tenant testified that the resident Landlords sister, runs a local business and who is not the Landlords' agent, called her on April 16, 2020 and told her she better pay her rent. The Tenant testified that she also received harassing text messages from her.

The Tenant testified that on April 19, 2020 another occupant of the rental property Ms. T.M. harassed her by running up to her and getting in her face and calling her a bitch. The Tenant testified that on April 23, 2020 a vehicle with Ms. T.M. in the passenger seat attempted to block her from leaving her vehicle. The Tenant testified that on April 29,

2020 she was sitting in her car at her assigned parking stall when Ms. T.M. walked past her and started video recording her and swore at her.

The Tenant testified that she reported her concerns to the resident Landlords on May 14, 2020. The Tenant provided a copy of the letter. She testified that she received a response from the Landlord one day later on May 15, 2020. The Tenant testified that the Landlord apologized and stated that they are sorry this happened to her. The Tenant testified that the Landlord offered that they could end the fixed term tenancy.

The Tenant testified that she expected the Landlord to uphold her right to quiet enjoyment. The Tenant testified that she wanted the Landlord to speak to Ms. T.M. to tell her to stop harassing her.

The Tenant testified that she did not reach out to the Landlord further regarding the issue of harassment or the Landlords response to her reported concern. She testified that she has spoken to a police officer about the behaviour of Ms. T.M.

The Tenant testified that the Landlord sent her a letter dated May 22, 2020 offering a mutual agreement to end the tenancy.

In response to the Tenant's testimony, the Landlord testified that there is no denying that there was a dispute between the Tenant and Ms. T.M. The Landlord testified that in these situations regarding tenant vs tenant disputes both occupants receive warning letters. The Landlord testified that on May 15, 2020 Ms. T.M. was sent a warning letter regarding the reported incidents.

The Landlord testified that they offered to end the tenancy by mutual agreement because the Tenant's letter of May 14, 2020 requested that liquidated damages for ending the tenancy early be waived.

The Landlord testified that he apologizes that the Tenant feels the way she does.

With respect to the allegation of a violation of privacy regarding Ms. T.K. the Landlord testified that Ms. T.K. is not an agent of the Landlord and the interaction between the Tenant and Ms. T.K. has nothing to do with the Tenant's tenancy issues. He testified that the incident is related to the Tenant's harassment on one of Ms. T.K.'s employees.

Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The issues for me to consider is whether or not the Landlord has failed their obligation to protect the Tenants right to quiet enjoyment. Did the Landlord fail to take action in response to the Tenants concerns about the behaviour of another occupant of the rental property and was there a privacy breach that amounts to a breach of quiet enjoyment?

I find that the there was a tenant vs tenant dispute involving the Tenant and Ms. T.M. I find that when the Landlord received the Tenants complaint the Landlord immediately responded. I accept the Landlords testimony that Ms. T.M. was warned about the reported incidents. I find that the Landlord acted appropriately by immediately sending a warning letter to Ms. T.M.

I find that the Landlord did not fail to take reasonable steps to resolve a complaint received regarding incidents involving another occupant of the rental property.

With respect to the allegation of a privacy breach, I have considered the testimony before me and I have reviewed the 10 pages of documentary evidence. The Tenant did not refer me to evidence showing a clear privacy breach and I find there is insufficient evidence of harassment. I note that a copy of a text message the Tenant received from Ms. T.K. suggests that Ms. T.K. believed the Tenant contacted an employee of Ms. T.K. and is harassing her. I find that this text message supports the testimony of the Landlord that the interaction between the Tenant and Ms. T.K. is not related to tenancy issues that amount to a breach of privacy.

After considering the totality of the evidence, I find that there has not been a privacy breach that amounts to loss of quiet enjoyment and the Landlord has not breached the Act by failing to protect the Tenant's right to quiet enjoyment.

The Tenant's application is not successful and is dismissed without leave to reapply.

Conclusion

I find that the Landlord is not responsible for a privacy breach and took reasonable steps to protect the Tenants right to quiet enjoyment after receiving a complaint from the Tenant.

The Tenant's application is not successful and is dismissed without leave to reapply.

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