



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Delaney properties LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE OLC

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement
- to suspend or set conditions on the Landlord's right to enter the rental unit

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's evidence, and no issues were raised with service of these documents.

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 Matters

Prior to filing this application, the Tenant filed an application to cancel a 2 Month Notice to End Tenancy. That application was filed on March 31, 2020. Subsequent to that, on May 8, 2020, the Tenant filed an amendment to that application, to request an order for the landlord to comply with the *Act*, to reduce rent, and to have repairs made to the property. That hearing took place on May 25, 2020.

At the start of that previous hearing, the Arbitrator looked at the list of issues the Tenant had applied for, and determined what the priority was for that hearing. The priority issue was whether or not the tenancy would end, based on the 2 Month Notice. The

remaining issues were severed off from that hearing, and the Tenant was given leave to reapply for any issues that were not resolved at the hearing on May 25, 2020.

The Tenant also filed a second application, with a different file number and a different hearing date. The Tenant's second application was filed on May 14, 2020, and the hearing was scheduled to be heard today, June 15, 2020, as part of this file number. When the Tenant filed her application on May 14, 2020, she made an application requesting "I want the landlord to comply with the Act, regulation and/or the tenancy agreement", as well as "I want to suspend or set conditions on the landlord's right to enter the rental unit or site".

Since making the second application on May 14, 2020, the Tenant has uploaded numerous documents. The Tenant also uploaded a copy of an application for amendment, as well as a monetary order worksheet. However, this amendment was the one she submitted for her previous hearing, which was held on May 25, 2020. The amendment listed her previous file number, and did not reference this second application. The amendment was also drafted and dated May 8, 2020, which is prior to when this application was even filed. In any event, I find the amendment (from the last hearing) clearly refers to a different file number. I find the Tenant cannot amend this hearing, by using the amendment form she had from a previous hearing, with different issues, and different file numbers. I find the Tenant has not sufficiently filed or served her amendment for the purposes of this proceeding. As such, I find the issues I must consider in this proceeding are limited to what was initially applied for on May 14, 2020. Those issues are addressed below.

In other words, the Tenants' amendment (from her last hearing), including her request for compensation in the form of a rent reduction, has not been filed correctly or amended appropriately, such that it is part of today's proceeding. The Tenant did not apply for monetary compensation as part of this proceeding, and only applied for the grounds listed below.

Issues to be Decided

- Are the Tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?
- Should there be conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Tenants stated that they are not happy with how the Landlord is treating them, particularly since the 2-Month Notice was issued at the end of March 2020.

The Tenants stated that when they initially filed this application, they thought they would be “stuck” there all summer, which is why they requested parameters be set on what the Landlord is entitled to do, particularly with respect to the yard space. The Tenants did not raise any issue with the Landlord accessing the interior of the home.

Since filing the application, the Tenants stated that they have found another unit to move to, and will be gone within 2 weeks, by the end of June 2020.

The Tenants were asked to clarify what exactly they were still seeking, given the tenancy was going to end in 2 weeks. The Tenants explained that they are mainly concerned with being left alone for the duration of her tenancy and having their privacy back. The Tenants explained that after the Landlord issued the 2 Month Notice, the relationship became hostile. The Tenants stated that a couple days after getting the Notice, the Landlord took down a privacy fence separating their yard area from the Landlord’s area. The Tenants explained that this is a side-by-side duplex and the Landlords live next door. The Tenants stated that since the privacy fence was taken down, the Landlord has sat out at their outdoor table, and has been able to stare into her house, and make her feel uncomfortable.

The Tenants stated that they feel they have lost the use of their backyard, and have no privacy anymore. The Tenants stated that the Landlord is routinely coming onto their side of the yard to cut the lawn, and do maintenance. The Tenants feel the Landlord is simply trying to make them uncomfortable by coming and going in their part of the yard.

The Landlord explained that he is the one who has historically kept up the yard (for the whole duplex), cut the lawn, and watered plants and trees. The Landlord stated that they have no interest in causing distress to the Tenants, and that the only reason they ever come over to the Tenants’ side of the yard is to cut the lawn, and water plants. The landlord explains that he cuts the lawn around once a week, and waters almost daily. The Tenants feel this is too often. However, the Landlord stated that because this is in a dry climate, it is necessary to water often. The Landlord stated he does not go over to water if it has rained, and denies that he goes over excessively or in a way that is hostile or aggressive.

The Tenants did not speak to, or elaborate on any further issues, nor did they try to advance a claim for monetary compensation. The only issue the Tenants raised in the hearing was relating to maintaining her privacy and use of her part of the yard for the last couple weeks of the tenancy.

Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I note the relationship between the parties has degraded substantially over the last couple of months, ever since the Landlord issued a Notice to End Tenancy. The Tenants feel they have lost the use and enjoyment of their private back yard area ever since the privacy fence was taken down. However, I note the Landlord explained that this fence was in significant disrepair, and was rotting. The Landlord took this fence down and has yet to re-install it.

The Tenants do not refute that the privacy fence was in rough shape. I do not find it is unreasonable to remove an older rotting privacy fence, particularly if it is at risk of falling over. In fact, the Landlord is expected to repair and maintain these items, as necessary. I decline to make any orders with respect to the Landlord replacing this fence, given the Tenants stated they are moving out in 2 weeks.

At the hearing, the Tenants were only concerned with keeping the Landlord out of their yard area over the coming weeks, so that they can use and enjoy the space for the duration of the tenancy.

I accept this is a side-by-side duplex and that there is an inherent proximity between the Landlord and the Tenants. This has caused privacy issues and has been exacerbated by the loss of the fence, and the degrading relationship. It is undisputed that the Landlord is the one who has generally been responsible for cutting the lawn, and watering the plants. It appears this has occurred in the past, without incident, until recently.

Given the very limited time left in the tenancy, I decline to make any orders to repair or replace privacy barriers. Rather, my focus will be on reducing conflict and interaction

between the parties until the end of June. I order the Landlord to cut the lawn no more than once per week until the end of the tenancy. Further, I accept that this rental unit is located in a dry climate, and that regular watering will need to occur to prevent damage. Independent of my order regarding lawn cutting, I order the Landlord to ensure all watering, and other maintenance activities done on the Tenant's side of the yard are completed between 8:00 am and 12:00 pm and are done no more than once every two days. I encourage the Landlord to minimize any and all Landscaping activities, including watering until the end of June.

Both parties are still expected to comply with their rights and responsibilities under the Act, and must work together until the tenancy ends in two weeks.

Conclusion

The Landlord's access restrictions are outlined above.

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 15, 2020

Residential Tenancy Branch