



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, FFT

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 pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord was represented by their agents CF and MB in this hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). The landlord confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 15, 2020, with monthly rent currently set at \$3,800.00, payable on the first of every month. The landlord collected a security and pet deposit in the amounts of \$1,900.00 each deposit.

The tenants filed this application as they want exclusive use of the storage space inside the home, as well as the storage shed on the property. The tenants confirmed that as of the hearing date that they have changed the locks, and now have access to the spaces. The tenants want an order confirming their right to use these two spaces as part of the tenancy. The landlord's position is that the two spaces were not included in the monthly rent, and the landlords retained these two spaces for their own use.

The tenants testified that neither the landlord nor their agents have ever informed them that the two spaces were not part of the tenancy agreement, despite their statements submitted for this hearing. The tenants testified that they understood the monthly rent to include exclusive use and access to all areas of the property and home, including the 6 feet high, 1,500 square feet storage space on the bottom floor, as well as the shed that houses the power supply for the entrance gate of the property. The tenants questioned why the landlord would require these two spaces as the home was no longer used as a short-term rental property, and as the tenants were responsible for maintenance of the home and property. The tenants testified that the storage space in the home was the only storage in the home. The tenants confirmed that the landlord did offer to provide an additional shed for them to use, but the tenants specifically want access to this shed for safety issues as the gate had malfunctioned in the past, and the only alternative to override the gate using the power supply was to use a key. The tenants testified that due to medical issues, they wanted access to the shed for peace of mind the case that they could not locate or access the key, and the gate malfunctioned again.

The landlord's agents testified that the tenants were informed prior to the move-in that they would not have access to the crawl space and storage shed. The landlord's agents testified that the landlords retained the use of these two areas for their own storage, and that this was clear as the move-in inspection report and tenancy agreement do not include these two spaces. The landlord's agents dispute the tenants' argument that they would need access to these two areas as the landlord has offered the tenants the use of

a secondary shed at no cost, and the tenants were provide with keys to override the gate. The landlord's agents provided a statement from the service technician that no one should have access to the power supply in the shed except authorized personnel. The landlord's agents testified that the key was provided to the tenants, and that access is not required for safety reasons.

Analysis

In this matter the tenants bear the burden of proof that it is likely, on balance of probabilities, that facilities listed in the tenants' application were to be provided as part of the tenancy agreement. I have reviewed and considered all relevant evidence and testimony presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) of the *Act* that storage space is considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

I find that both parties provided conflicting testimony about whether the tenants had use of the storage space in the home and storage shed. The landlord's agents testified that the landlord retained use of these two areas for their own use, while the tenants testified that there was never any mention by the landlord or their agents that these two areas were not included as part of the rental agreement. The written tenancy agreement does not reference these two specific areas, nor are these two areas referenced in the move-in inspection report. The tenants testified that they were never informed either verbally or in writing that they did would not have use of these two areas, and they were under

the understanding that as tenants they should have access and exclusive use of these two spaces.

As stated above, the tenant applicants have the burden of proof in supporting their claim. In light of the evidence before me, I am not satisfied that the use of the storage area in the home or the storage shed were included as part the tenancy agreement. As set out in Residential Tenancy Policy Guideline #6 and section 28 of the *Act*, the tenants have the right to exclusive possession and use of the rental unit.

A. LEGISLATIVE FRAMEWORK

Under section 28 of the *Residential Tenancy Act* (RTA) and section 22 of the *Manufactured Home Park Tenancy Act* (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Although the tenants are correct that under the *Act* and legislative framework they would have exclusive use possession of the rental space, I am not satisfied that the two storage areas were included as part of the rental space. In light of the disputed testimony that the agents had verbally informed the tenants that these two spaces were not included, I have considered the undisputed facts such as the fact that neither the written tenancy agreement nor the move-in inspection include these two spaces as part of the tenancy agreement. As stated above, the burden of proof is on the applicants, and I am not satisfied that the tenants had provided sufficient evidence to support that the landlord had included these areas as part of the tenancy.

Furthermore, I have considered whether the tenants required access to the storage shed for safety reasons, and I am not satisfied that access is necessary. Although the tenants expressed concerns about the need to override the gate in the case of a malfunction or issue, I find that they have been provided with a key that allows them to do so. I find the possession of this key sufficiently meets this purpose, and in light of the statement made by the service technician that only authorized personnel should access the power supply, and in light of any contrasting expert evidence to support otherwise, I find that the landlord has fulfilled their obligations in meeting safety standards for this tenancy. Although I find that the tenants' expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the landlord has failed to meet their obligations regarding this matter, and on this basis I am dismissing the tenants' application for an order to allow them exclusive use of these two spaces without leave to reapply. As the tenants have changed the locks to these two areas, I order that the tenants restore the landlord's use of these two areas. I note that the

landlord is still bound by section 29 of the *Act* which prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The tenants are also entitled to their right to quiet enjoyment of the included spaces under the *Act*.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application for recovery of the filing fee.

Conclusion

I dismiss the tenants' entire application 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: August 11, 2020

Residential Tenancy Branch