



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to sections 62 and 72 of the *Residential Tenancy Act*. The tenant applied for an order directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The landlord was accompanied by legal counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant provided additional evidence and submissions on a claim he is making for monetary compensation. By Residential Tenancy Rule of Procedure 2.2, the tenant's claim is limited to what appears in the Application for Dispute Resolution. The tenant has not made application for a monetary order and has not prepared an amended application as required by Rule of Procedure 4.1.

During the hearing I informed both parties that the tenant's claim and evidence for monetary compensation would not be considered in this hearing. The tenant remains at liberty to file a new and separate application to address the issue of monetary compensation.

Issues to be decided

Is the landlord acting in a manner that is non-compliant with the *Act*? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 01, 2019. A copy of the tenancy agreement was filed into evidence. The monthly rent is \$3,000.00 due on the fifth of each month. The rental unit is a detached house.

The tenant testified that at the time he entered into the tenancy agreement, the landlord was using the garage as his office. The garage can best be described as having a frontage of glass windows and a glass door. At the time of entering into the tenancy agreement the parties discussed the use of the garage and the landlord wrote:

The landlord will use the garge and access to the garge untill September 30th 2019.

(reproduced as written)

This term is initialed by both parties. The tenant agreed that on September 30, 2019 and onwards, he was provided with the use of the garage. The tenant stated that he is unable to park his car there due to the glass frontage which does not permit vehicle access. The tenant stated that he made multiple requests to the landlord to remove the windows and door. The tenant also stated that at the start of tenancy the landlord agreed to do so.

The landlord denied having agreed to remove the windows and door and stated that this house was constructed in this way before he purchased the home. The landlord filed photographs of the garage frontage.

I asked the tenant if he has any other examples of the landlord not complying with the *Act* and he was unable to describe any that were not attached to his monetary claim.

Analysis

Based on the documentary evidence and testimony of both parties, I find that the garage frontage was in existence at the start of tenancy.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that the landlord agreed to remove the glass frontage of the garage and the landlord denied having agreed to do so. The tenant was not able to provide any documentation to support his version of events and therefore I accept the landlord's testimony that he did not agree to remove the glass frontage of the garage. In addition, there is a handwritten term in the tenancy agreement that addresses the use of the garage but does not mention any changes that the landlord allegedly agreed to make.

Based on the above, I find that the tenant has not proven that the landlord failed to meet his obligations under the *Act*, Regulations or the Tenancy Agreement with regard to allowing the tenant the use of the garage after September 30, 2019. Accordingly, I find that it is not necessary for me to order the landlord to comply with the *Act*.

The tenant has not proven his case and is therefore not entitled to recover the filing fee of \$100.00.

Conclusion

The tenant's application is dismissed in its entirety.

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: September 18, 2020

Residential Tenancy Branch