



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: OPC

Introduction

The tenants seek an order under section 62(3) of the *Residential Tenancy Act* ("Act"), namely, that the landlord comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement.

The tenants filed an application for dispute resolution on September 21, 2020 and a hearing was held November 16, 2020. The tenant (A.T.), the landlord, and the landlord's son attended the hearing and were given an opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issue

Whether the tenants are entitled to an order under section 62(3) of the Act.

Background and Evidence

I have only reviewed and considered oral and documentary evidence which was relevant to determining the issues of this application. Further, only relevant evidence necessary to explain my decision is reproduced below.

The tenancy in this dispute began March 1, 2020. Monthly rent is \$2,000 and the tenants paid a security deposit of \$1,000. A copy of the written Residential Tenancy Agreement was submitted into evidence.

In this application, the tenant seeks an order under section 62(3) of the Act in sole response to an incident that occurred at the rental unit on September 20, 2020. The tenant testified that at 9:54 PM the tenant received a phone call from the landlord. One of the other residents in the multi-unit residential building had called the landlord to

complain about pot smoke. The landlord asked the tenant if he could come over and check out the rental unit to ensure that there was no pot smoke. The tenant said that “today is not a good day,” because the tenant was in pain, recovering from recent surgery. He told the landlord he needed to give 24-hours’ notice before coming to visit.

After the conversation, about ten to minutes later, the tenant hears a knock at the door and the landlord is there. The landlord allegedly “tries to come in.” The tenant asks the landlord, “do you smell weed?” A few, quiet minutes pass, with the landlord not saying anything, but he then starts yelling “yes, yes . . . you are out.” The landlord then “punches the wall” and, later in his testimony, the tenant says he “kicked” the wall. The landlord asked the tenant if he could come in, but the tenant says “no, you can’t come in.” The tenant then shut the door and the landlord departed.

The landlord testified that “exactly half of what he said is right, the other half is wrong.” The landlord testified that he had received several letters from strata regarding smoking or smoke-related complaints apparently connected to the rental unit. While the landlord explained that he is “not that kind of person to go at that time of the night,” he nevertheless wanted to find out what was happening. He had received a phone call from an unknown person – who it turned out was the occupant in the property located one floor below the rental unit – at 9:50 PM. At 9:54 PM the landlord called the tenant, but there was no answer. Two minutes later the tenant calls the landlord, and they briefly discuss the smoking complaint. The two then have a conversation about the landlord’s visiting the rental unit to investigate. At first the tenant says today is not a good day, but then later calls the landlord at 10:02 PM and asks, “where are you?”

Shortly after, the landlord arrives at the rental unit, only to be met with the tenant waving his camera at him; “he set me up,” the landlord surmised. The landlord denied kicking or punching the wall and denied any attempt to gain entry into the rental unit.

Both parties reference a video that was submitted by the tenant. The video (taken by the tenant) lasts 1 minute and 33 seconds and, depicts the landlord at the front door of the rental unit, in the hallway. The landlord and the tenant have a conversation which rapidly escalates to the tenant twice telling the landlord that he will take him to court, and the landlord responding that he will evict the tenant.

At no point during the video, it should be noted, does the landlord enter the rental unit, except – after the tenant invites the landlord to do so – to slightly stick his head through the door frame, and then to pull it back. I also note that at no time is the landlord seen to kick or punch anything.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Under section 62(3) of the Act, an arbitrator may “make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

In this dispute, the tenant made no clear argument or submission as to what right, obligation, or prohibitions under the Act would lead to an order compelling the landlord to comply with the Act. However, the underlying issue in this dispute, as best as I can discern, is the tenant’s complaint of the landlord showing up at the rental unit sometime after 10 PM on a Sunday night. There is a discrepancy between the parties’ testimony as to whether the tenant told the landlord that it was acceptable for him to visit the rental unit to investigate the smoke complaint. The tenant said that the landlord came over after he told him that it was “not a good day”, whereas the landlord testified that the tenant asked the landlord “where are you,” implying or explicitly inviting the landlord to come over. Having viewed the video, however, I find that the tenant’s version of events is more likely, that is, that the landlord attended to the rental unit after being told not to.

In respect of the tenant’s complaint about the landlord showing up without notice, section 29(1)(a) and (b) of the Act states as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

In this case, the landlord showed up at the rental unit (either at the behest of the tenant or on his own prerogative) and was given permission, by the tenant, to stick his head through the door in order to smell the air. This he did. And that was the only instance of the landlord “entering” the rental unit. In other words, I find that the tenant gave permission at the time of the entry for the landlord to put his head into the rental unit.

Next, I must briefly turn to the tenant’s claim that the landlord ought not to have showed up so late at night to bother him. 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 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, I find that, if the landlord showed up without the tenant’s permission after 10 PM, then there might be a basis for the tenant to argue that his right to quiet enjoyment was breached, namely, freedom from unreasonable disturbance. However, it should be noted that the tenant made no particular argument as to this breach. Nor, even if such an argument could be considered, a one-time instance of a concerned landlord attending to his property is not, I must conclude, a breach of a tenant’s right to quiet enjoyment. Indeed, by all accounts, the tenant and the landlord had virtually no interaction until the event of September 20, 2020. There is no evidence that the landlord repeatedly shows up unannounced at all hours of the day to disturb the tenant. And, it must be recognized by the tenant that if there are complaints about smoking in the rental unit, a landlord is fully within his legal rights to investigate.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for an order under section 62 of the Act. Indeed, I find that the landlord has acted lawfully within the Act and see no ground or reason on which an order compelling his compliance should be issued.

Conclusion

I dismiss the tenants' application, without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 16, 2020

Residential Tenancy Branch