



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, LRE

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 4, 2020 (the "Application"). The Tenant applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, an order to restrict or suspend the Landlord's right to enter the rental unit, and for an order for regular repairs, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant and the Landlord's Agent M.W. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant stated that the Landlord has completed the necessary repairs to the rental unit. As such, the Tenant withdrew her claim for an order for regular repairs. The Tenant's claim for repairs was withdrawn accordingly. The hearing continued based on the other claims that the Tenant has applied for in her Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order restricting or suspending the Landlord's right to enter, pursuant to Section 70 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$1,400.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00, as well as a pet damage deposit in the amount of \$300.00.

The Tenant stated that she feels as though the Landlord's Agent is breaching her quiet enjoyment of the rental property. The Tenant stated that the Landlord's Agent attends the rental property frequently and without notice. The Tenant acknowledged that the Landlord only entered the rental unit on one occasion with a plumber, however, the Tenant stated that the Landlord's Agent's interactions and communications with the Tenant are aggressive and threatening.

The Tenant stated that the Landlord has been out of Country for approximately 6 months, however, there has been a lack of direction as to who is responsible for dealing with tenancy related matters in his absence. The Landlord's Agent stated that clear notice was provided to the Tenant that the Landlord's Agent would be the point of contact in the Landlord's absence. The Landlord's Agent referred to a memorandum which had been served to the Tenant in support.

The Landlord's Agent denied being aggressive or threatening towards the Tenant, however, does acknowledge that she has attended the rental property on several occasions to deal with several issues such as garbage, plumbing, a rodent problem, and the removal of a tree in the yard. The Landlord's Agent stated that despite attending the rental property for these reasons, she has only had interactions with the Tenant on two occasions. The Landlord's Agent provided a detailed outline of her attendances to the rental property and a description of the purpose in relation to each attendance.

The Tenant stated that she feels as though she was being blamed for the garbage and rodent issue. The Tenant stated that she pays to have her garbage removed and that the other occupants at the rental property are likely to be the cause of the issues. The Landlord's Agent stated that she is only following up on concerns that she had observed and that have been reported to her. The Landlord's Agent stated that the appearance of the rental property is poor and that she is trying to have things cleaned up and maintained in such a way. The Tenant agreed that the outside of the rental unit needs maintaining, but she asserts its not her wrongdoing that is contributing to the poor appearance.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Residential Tenancy Policy Guideline 6 also sets out that;

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.

According to Section 32 of the Act,

(1) A landlord must provide and maintain residential property in a state of decoration and repair that;

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

In this case the Tenant is claiming that the Landlord's Agent is breaching her quiet enjoyment of the rental unit with her frequent visits to the rental property as well the communication between the Landlord's Agent and the Tenant. In this case, I find that the Landlord's Agent has provided sufficient evidence to demonstrate that her attendances to the rental property were reasonable, and for the purpose carrying out her responsibilities under Section 32 of the Act. As such, I find that the Tenant has provided insufficient evidence that the Landlord, or their Agent has breached the Act, or the Tenant's quiet enjoyment of the rental property.

In relation to the Tenants' claim that the Landlord's Agent is entering the rental unit without notice, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord or their Agent has breached the Act. However, it is suggested that moving forward, the parties adhere to Section 29 of the Act which states;

(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;

The Landlord must ensure that the proper written notice is provided to the Tenant in accordance with Section 29 of the Act. Should the Landlord fail to provide the Tenant with written notice prior to entering the rental unit, the Tenant is at liberty to make an Application for monetary compensation under the Act.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that the Landlord, or their Agent, has breach the Act, tenancy agreement, or Regulations. Furthermore, the Tenant has provided insufficient evidence to support that the Landlord had entered the rental contrary to Section 29 of the Act. As such, the Tenant's Application is dismissed.

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: December 14, 2020

Residential Tenancy Branch