



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, LRE, RP, RR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order that the landlords make repairs to the rental unit or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing, and both tenants and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the hearing, I advised the parties that the Rules of Procedure require that multiple applications made in a single application must be related, and generally I would hear testimony with respect to the application for an order cancelling a notice to end the tenancy for landlord's use of property. However, in this case, no one has provided me with a copy of a notice to end the tenancy, and I dismiss the tenants' application in that regard, with leave to reapply.

The hearing commenced concerning the other applications.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

The issues remaining to be decided are:

- have the tenants established that the landlords should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically to provide the tenants with quiet enjoyment of the rental unit?
- have the tenants established that the landlords' right to enter the rental unit should be limited or allowed conditionally?
- have the tenants established that the landlords should be ordered to make repairs to the rental unit?
- have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first tenant (JL) testified that this month-to-month tenancy began on April 1, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$550.00 as well as a pet damage deposit in the amount of \$550.00, both of which are still held in trust by the landlords. The rental unit is the upper level of a duplex, and the lower level is also tenanted.

The tenant further testified that the tenants seek compensation in the amount of \$200.00 per month from the beginning of the tenancy for loss of use of the 3rd bedroom. The floor is rotting, and that bedroom was to be the tenants' son's playroom. The tenants' son is a young boy, and has a heart condition and breathing issues so can't be in that room. The tenants take the boy to see a pediatrician regularly for breathing locally, and also travel to another City for his heart condition. The tenant calculates the amount as being \$200.00 for each of the rooms in the rental unit. The room is presently used for storage. The tenants mentioned a smell when they first moved in, and it was written on the move-in condition inspection report. The landlords had the carpet cleaned, and the tenants did so as well. The smell went away, but came back and the tenant told the landlords about that in August, 2020.

The tenants also seek an order that the landlords make repairs to the front door and bedroom floor. The landlords were provided a letter dated September 25, 2020

requesting repairs including new weather stripping around the front door, water leaking into the house by the front door and full repair of flooring, high moisture content in the rental unit, and rotting floor under the window in the spare bedroom. A copy of the request has been provided for this hearing, and it states that it is a follow-up to the verbal request for repairs in early August, and requests that the repairs be completed by October 31, 2020.

The tenants have also provided photographs of carpet lifted and plywood underneath, a gap at the door, and a wall with black marks on it.

The tenant also testified that the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property that indicated that the rental home has sold. However, a contractor was at the house on a ladder looking at the roof without any notice to the tenants, who didn't have the courtesy of knocking on the door, and the tenant's wife was inside the rental unit in her pajamas. Two photographs have been provided for this hearing. The tenants provided a request in writing dated September 30, 2020 that the landlords communicate in writing, and provide 24 hours written notice.

The second tenant (CAP) testified that everything her husband said is true.

The landlord testified that all of the tenants' complaints have been met. The tenants complained about a smell and the other landlord cleaned; no complaints were made after that. Then the tenants pulled up some carpet and found a small area of water at the front door. The tenants pointed out moisture in the bedroom and the landlord looked at it. The next day, August 13, 2020 the landlord returned, dried it out with a hot air gun. The landlord went into the bedroom and found that the floor under the carpet was stained, not rotten. The landlord made sure it stayed dry and didn't see any reason to remove the plywood and replace it, or he would have done so, and went back several times, and suggests that perhaps the tenants' son dripped a liquid out of his sippy cup.

The landlords have also provided a letter dated November 13, 2020 addressed to the landlords from a Realtor stating, among other things, that the writer viewed the residence in September, 2020 and observed no rotting in the floors and any water egress at the front door was resolved by the landlords. It also states that the third bedroom was being used by the tenants for storage.

The landlords have also provided a copy of a receipt dated September 25, 2020 in the amount of \$120.57 for weather stripping and "Mold Ctrl," as well as another for plywood dated August 13, 2020, and photographs.

The landlords have also provided a string of text messages between the landlord and one of the tenants wherein the tenant suggests that if the landlords "...want us to leave quietly within 30 days, offer us a cash payment. We will be gone." The string also includes a response from the tenant that suggests \$4,400.00 plus return of the security deposit.

The landlord agrees that the roof was inspected, however the landlords assumed that the roof, side of the house and lawn are common areas.

Analysis

Firstly, the landlord is incorrect that the roof and side of the house is a common area for the landlords or contractors to inspect the house without notice to the tenants. The *Residential Tenancy Act* states:

28 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.

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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Putting a ladder up against the house without notifying the tenants prior is contrary to the law. Therefore, **I order the landlords to comply with the Act by providing the tenants with reasonable privacy.**

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. I have reviewed all of the evidentiary material, and I find that the landlords have replaced the weather stripping. I am not satisfied that the tenants have established that any gap in the front door hasn't already been remedied by the weather stripping. I also find that the tenants could easily remove any black marks on the bathroom wall with a bleach, water solution, as part of the tenants' responsibility to maintain reasonable cleanliness standards throughout the rental unit. I am also satisfied in the evidence that the landlords rectified water egress at the front door by building a covered porch.

I am not satisfied that the tenants have established that the landlords have not maintained the rental property. That isn't just the opinion of the landlord, but also of the realtor, and I dismiss the tenants' application for an order that the landlords make repairs to the rental unit.

With respect to the spare bedroom, I agree with the landlord, considering the photograph provided, that there is no moisture under the carpet, no mold growing along the plywood or up the wall, but a stain from a previous spill.

Considering the above, after reviewing all of the evidence, I am not satisfied that the tenants have established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and I dismiss the tenants' claim.

Since the tenants have been partially successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants as against the landlords in that amount.

Conclusion

For the reasons set out above, the tenants' application disputing a Two Month Notice to End Tenancy for Landlord's Use of Property is hereby dismissed with leave to reapply.

I order the landlords to comply with the *Act* by providing the tenants with reasonable privacy.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the Residential Tenancy Act in the amount of \$100.00 as recovery of the filing fee.

The balance of the tenants' application is hereby dismissed 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: December 21, 2020

Residential Tenancy Branch