



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC

Introduction

The tenant JK applies for a monetary award for damage and loss resulting from a power outage at the home in August 2020. She also seeks a compliance order, an order restoring a service or facility and a rent reduction on the basis that the landlords have withdrawn her use of a patio and a grass area in the backyard and wish to change the mail arrangements at the house.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

A central issue is what portion of the property outside the rental unit might be considered common property or might be considered to be for the exclusive use of the landlords or the tenant. A second issue is the question of the tenant's loss resulting from a discontinuation of electrical power to the home for three days in August 2020.

Background and Evidence

The rental unit is a two bedroom suite in the basement of the landlords' home. The tenancy started in June 2018 with a different landlord. The monthly rent is \$1500.00. The landlords hold a \$750.00 security deposit.

The previous landlord and his wife lived in the home until about March of 2020. The home was sold to the current landlords, who moved in in June 2020.

The entrance to the tenant's suited is at the back of the home down an outside flight of stairs into a relatively long, narrow, concrete "patio" area perhaps 2.5 meters below ground level. In that area are the sliding door into the tenant's suite and two windows of the suite.

By the written tenancy agreement made with the original landlord the tenant is entitled to two parking spaces off the lane behind the house. The entire back yard is solidly fenced. The tenant's parking area is outside the fence. The tenant gains access to the parking area by coming to the top of her stairs and travelling a short distance toward the lane and through a gate in the fence.

The tenant's suite is below a rear corner of the house. One may gain access from there to the street in front of the house by turning 180 degrees at the top of the tenant's stairs, walking to the corner of the house, then right, along a brick style path beside the house to the front corner of the house, in fact the left rear corner of an attached three-car garage, and thence right, on the same path beside the garage, to a large driveway and the street.

At the top of the tenant's stairs there is a concrete patio, covered by the home's roof. Directly across the patio, approximately six or seven meters away from the head of the stairs, is a portion of the landlords' home, jutting out about three meters into the back yard. The wall of that portion facing the stairs has a floor to ceiling window and a door into the rear of landlords' home.

The jutting portion of the landlords' home is a sunroom and living area with an open access to the kitchen/breakfast area in the home. The back wall of the sunroom area is composed of floor to ceiling windows.

Directly behind the landlords' sunroom is a large grass-covered back yard. It is completely surrounded by a high, solid wooden fence but for an opening of about two meters at a right angle in front of the sunroom door facing the head of the tenant's stairway. The opening is not gated. No portion of the backyard could be considered to be directly behind the tenant's rental unit.

The written tenancy agreement makes no mention of the tenant's use of any portion of the property outside her rental unit but for the parking spots in the rear.

The tenant says the new landlords have prohibited her from using the back yard.

The tenant testifies that with her original landlord she had the right to use the patio at the top of her stairs and the right to use the grass covered back yard. She has two children who stay with her two weeks on and two weeks off and since the start of the tenancy they have played in the back yard. She produces photos of the children making snowmen in that area and being in the area during milder times. The landlords produce what appears to be security camera footage showing a child ambling across the yard.

The tenant says under her previous landlord she had also regularly used the concrete patio area at the top of her stairs and that has been prohibited by the new landlords.

VJ testified. He was the prior landlord's realtor and has known the property the tenant moved in. He lives not far away. He was the realtor for the sale of the home to the new landlords. He says the prior landlord valued his privacy and that the tenant did not have a right to use the grass covered back yard. He says the landlord once permitted the tenant's children to make a snowman in the backyard during a rare heavy snowfall. He says that between March 2020 and June 2020, the home was vacant and the tenant used the backyard without permission, but without complaint because no one was living in the house for about two and one-half months.

The landlord RP testified that the backyard is a feature of the home. It is the main focus from the areas of the home that are most used; the connected kitchen/breakfast area/sunroom, with floor to ceiling windows facing onto the backyard. A person in the backyard (such as the tenant or her children) could easily look right into the landlords' home, invading the landlords' privacy. He says when using the kitchen in the home one looks right into the backyard.

The landlord RW testified saying the backyard was a feature that attracted them to buy the property.

The landlords' filed a signed letter from SP, the prior landlord. It states that the tenant "was never given exclusive use or any use to any outdoor patio or to the grass/yard."

The tenant says that under the old landlord she collected her mail from the mailbox at the front of the home. Now, she says, the new landlords have directed that this must stop and that they will deliver the tenant's mail to her from the box.

On August 28, 2020 the electrical power to the entire house was shut off by the electric company. The landlords' automatic electrical generator came on. It supplies electricity to a portion of the home but not to the tenant's rental unit. It appears that the generator caused a carbon monoxide detector to go off in the landlord's portion of the house. The parties, including the tenant evacuated the structure. The fire department was summoned. They checked out the area and the generator. They directed the landlords to have the generator looked at.

The evidence differs on whether any carbon monoxide entered the tenant's rental unit.

Unfortunately, the power outage happened on a Friday and the landlords were unable to straighten things out with the electric company and have power restored for three days.

The landlord RW testifies she offered to store the tenant's food as was given some small items which she preserved. The tenant says the offer was only to store "a few" items. She says she was able to store some of her refrigerated food with the landlord but testifies that a great quantity of the remainder was spoiled, including food located in an upright freezer located outside in the stairwell. She submitted a list of food items she claims to have lost and denotes their value.

The tenant testifies that she spent two nights in a nearby hotel, at the suggestion of the fire department. She seeks compensation for that hotel cost.

The landlord RW says the tenant's hotel receipts do not match her original statement of cost and that the hotel receipt is dated for a day some months in the future. She also takes issue with the tenant's list of food lost, the attributed cost and various of the receipts the tenant produced.

The tenant says the new landlords have barred her the use of internet wifi that she had with her original landlord.

Analysis

The Backyard

The tenant's evidence makes it clear that the prior landlord either permitted or did not object to her to use of the backyard on occasion, but that is different from a right to use or share the yard.

Tenancy agreements and particularly the standard form tenancy agreement offered by the Residential Tenancy Branch makes no specific provision for the determination of what areas are included in the grant of exclusive possession to a tenant or what is or is not common property; areas that a tenant is entitled to use in common with other tenants or with a landlord or co-user of a residential home, as in this case.

In such circumstances, where a term is absent from an agreement, it is reasonable to rely on what a reasonable person, looking at the circumstances objectively, would conclude would have been the agreement between the parties at the start of the tenancy.

The circumstances in this case make it plain that the backyard is for the use and benefit of the homeowner, to the exclusion of the tenant. The yard, its fencing and its location solely behind the landlords' home make it very unlikely that the exclusive use of it would have been granted to the tenant or that shared use of it would have been contemplated. It is annexed to the landlord's portion of the home for the betterment of that home and not as a common area for general use of all the occupants of the property. It has the look of a private area and not a place that an uninvited person would normally be found in.

I find that the tenant has no right to use the grassed backyard without the permission of the landlords.

The Stairwell

The landlords state that the tenant has no right to use the stairwell in front of her rental unit and they take objection to the fact that she has storage shelves and an upright freezer in the area.

Again, the tenancy agreement is silent about any right to exclusive occupation of this area. On the same analytical basis as used for the backyard, the circumstances of this case make it clear that any reasonable person would see that the stairwell is an area to which the tenant is entitled to exclusive possession. Had the stairs gone up to a second floor rental unit instead of down into a basement unit, the area in front of the tenant's door would be a deck or balcony and clearly for her exclusive use. One cannot go anywhere else from the stairwell than either into the tenant's suite or up the stairs.

The landlords complain that the area is unsightly and the upright freezer is an electrical hazard. I determine that those questions are not claims fairly raised in this application and so I decline to deal with their determination. The landlords are free to apply for an order directing the tenant to remedy the situation. It would appear that the parties are involved in other dispute resolution matters coming on for hearing, including the determination of the validity of a one month Notice to End Tenancy for cause. That Notice alleges the tenant has failed to clean up the clutter in the stairwell and so the question will likely be resolved at that hearing.

The Patio

The patio area at the top of the tenant's stairs is a more difficult question. It is a relatively large area. The stairs come right up onto it on one side and the landlords' sunroom door opens onto it at the other. The gate to the tenant's parking spots is across it and the landlords' access to their backyard is at a corner of it. It is part of an access route not only to those areas but to the pathway leading around the house to the front.

In the circumstances of this case I consider a reasonable person would conclude that the tenant has no right to the exclusive use of any portion of the patio nor could one consider any part of it to be common property that the tenant is entitled to share with the landlords, but for her right and the right of her guests to pass and repass over it for the purpose of access to her rental unit.

This having been said, as part of the tenant's right of access over the patio it is not unreasonable to conclude that the temporary storage of items, like a current guest's bicycle, would be permitted within, say, a two meter square area at the top of the stairs or along the railing bordering the stairs or beside the gate to the parking area. Such use would be ancillary to the right of access. It should also be said that the landlords are not at liberty to use the patio in a way that might impede the tenant's right of access to the rental unit.

The Path

During the hearing it appeared the landlord RW was taking the position that the tenant was not entitled to use the path around the house nor the gate to her parking area. The effect of such a position would be to remove all access by the tenant to her rental unit; an obvious absurdity. On being questioned by J V-D for the tenant RW indicated, after noticeable hesitation, that the tenant was only entitled to gain access to her rental unit by way of the lane parking area and the gate.

Again, the tenancy agreement is silent about access. In the circumstances of this case a reasonable person would conclude that any tenant occupying such a suite located in the basement at the rear of such a house would have access for herself and her guests from the front street and around behind the garage. I find that the tenant has that right of access as well as the obvious pathway across the patio from the rear parking area, through the gate and to the top of her stairs.

The tenant has no right to encumber or diminish any portion of this pathway with permanent or semi-permanent items, including her planting pots and she should remove them to her own area.

The Mail

The tenancy agreement lists the address of the rental unit and that is where the tenant is entitled to receive her mail unless mutually agreed between the parties. The new landlords may not like the idea of sharing a mailbox with the tenant but that is the arrangement that has been made for this tenancy. The landlords are not at liberty to intercept the tenant's mail and deliver it themselves later. The tenant is not at liberty to remove and take the landlord's mail from the box. Indeed, either action without the other's consent could lead to significant adverse consequences (see s. 48, *Canada Post Corporation Act*, R.S.C. 1985, c. C-10). The landlords may consider attaching a second box for the tenant or arranging a second box and second postal address (*i.e.* "Unit B" or the like). I leave that to the parties and suggest they canvas their options with Canada Post.

The Tenant's Claim for Loss

It is not argued but that the landlords bear the responsibility for the loss of electrical power from August 28 to 31, 2020 (though they indicate they may have a claim against

the previous landlord for failing to pay the power bill). I find that the fact of having no power, coupled with a concern about exposure to carbon monoxide justified the tenant in seeking alternate accommodation for those days. I find that the hotel receipt submitted by the tenant has all the appearance of a valid receipt for two nights at a hotel for a total charge of \$210.00, paid in cash. The receipt shows a “balance owing” of \$0.00 which would indicate that it is not merely a reservation or pre-authorization but proof of payment. I consider it most likely that the date shown on the invoice; “08 / 31 / 2021” to be a typographical error.

I award the tenant \$210.00 for alternate accommodation during the power outage.

I am satisfied that though the landlords offered to preserve the tenant’s food during the power outage, it is unlikely that they would have offered capacity to store all her food considering that in addition to the food in her fridge, the tenant had an upright freezer of food in her stairwell.

The tenant’s assessment of her food loss is, in my view, very general. Her photos of the freezer interior show that it had been well stocked with purchased items at the time of the power outage, but, as the RW noted, a number of the items can be seen to still have frost on them, indicating they had not thawed and thus not spoiled.

Additionally, as noted by RW, some items that may have spoiled would have been partially used up at the time of the power outage.

In all the circumstances I award the tenant \$220.00 for her meals during the power outage and the cost of food replacement due to spoilage.

I award the tenant \$4.25 for the cost of a key copying.

Internet Wifi

The written tenancy agreement is clear, internet is not included in rent. Unless some other agreement is reached, she will have to arrange for her own connection with an internet service provider.

Conclusion

Monetary Award

The tenant will have a monetary award totalling \$434.25. There is no claim for recovery of any filing fee. I authorize the tenant to reduce her next rent due by \$435.25 in full satisfaction of the award.

Rent Reduction

In light of the findings regarding exclusive possession, common areas and the mailbox made above, I dismiss the tenant's claim for a rent reduction.

Provide Service or Facility

In light of the findings regarding exclusive possession, common areas and the mailbox made above, I dismiss the tenant's claim for an order that the landlord provide a service or facility.

Compliance Order

In light of the directions provided above there is no need, at this time, for a compliance order. If the landlords fail to comply with the directions above, regarding use of the property or provision of services, the tenant is free to re-apply.

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: February 12, 2021

Residential Tenancy Branch