



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62;
3. A Monetary Order for compensation - Section 67;
4. An Order for repairs - Section 32;
5. An Order for a rent reduction - Section 65;
6. An Order restricting the Landlord’s entry - Section 70;
7. An Order allowing the Tenant to assign or sublet the unit - Section 65; and
8. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant confirms that an amendment was made to remove the claim disputing the notices to end tenancy. The Tenant states that this amendment was made as the Landlord withdrew the notices to end tenancy. The Landlord confirms that the notices were withdrawn.

The Tenant confirms that the most compelling matter is the claim for the Landlord’s compliance with the terms of the tenancy agreement in relation to use of the garage and

in relation to having roommates. The Tenant confirms that it has no claim for a rent reduction or for repairs. The Tenant states that the claim for compensation is for loss of enjoyment related to the Landlord's acts to serve the notices to end tenancy. The Tenant states that the claim for a restriction on the landlord's entry is in relation to inspections of the unit.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the most compelling claim made by the Tenant is in relation to the Landlord's compliance with the tenancy agreement and as the claims for the Landlord's entry and for compensation is not related to the matter of the tenancy agreement terms, I dismiss these claims with leave to reapply. As the Tenant confirms that it does not have a claim for a rent reduction or repairs, I dismiss these claims.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord's compliance?

Background and Evidence

The following are agreed or undisputed facts: On May 1, 2021 the Landlord presented the Tenant with one copy of the tenancy agreement for signature. The tenancy agreement includes several terms in an addendum, one of which sets out that the Tenant will have use of some portion of the garage after the Landlord holds a garage sale. There are no terms in the tenancy agreement and addendum indicating that the number of occupants in the unit is restricted. The Landlord collected rent and a security deposit from the Tenant.

The Tenant states that it signed the tenancy agreement given to the Tenant. The Tenant provides a copy of the tenancy agreement. The Landlord states that the Tenant

informed them that the Tenant did not sign the tenancy agreement and argues that there is therefore only a verbal agreement.

The Landlord confirms that the clause in relation to the garage is that the Tenant would have use of half the garage. The Landlord states that it does not have any date for a garage sale. The Landlord states that the Tenant has been given use of half the garage. The Tenant states that it has not been given use of half the garage and has only been given a small area in the garage. The Tenant provides a photo of the garage.

The Tenant is not seeking to sublet or assign the unit. The Tenant states that it has more than one occupant in the unit and although the Landlord has not restricted the occupants in the unit the Tenant wants an order stopping the Landlord in the future from restricting the Tenant's ability to have a roommate or other occupant.

Analysis

Section 1 of the Act defines "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Given the undisputed evidence that the Landlord offered a written tenancy agreement to the Tenant, I find that the Landlord offered the written tenancy agreement to the Tenant. Given the Tenant's supported evidence of a signed agreement by the Tenant I find that the Tenant accepted the written tenancy agreement. As the Landlord collected a security deposit and rents, I find that consideration for the written tenancy agreement was made. For these reasons I find that there is no oral tenancy agreement and that the written tenancy agreement is binding on the Parties.

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Given the undisputed evidence that the addendum clause in relation to the garage is for use of half of the garage I find that the Landlord

must provide use of half the garage to the Tenant. As the term for the use being sometime in the future and as the Landlord's evidence is that no date has been set for the garage sale I find that this part of the term for use of the garage is vague and therefore not enforceable. I find that the Tenant is entitled to use of half the garage as of the start of the tenancy and the Landlord is ordered to provide the Tenant with use of half the garage immediately.

Section 62(3) of the Act provides that the director 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. Given the undisputed evidence that there is nothing in the tenancy agreement that restricts the number of occupants in the unit I find that the Landlord may not restrict additional occupants or roommates in the unit. As there is no evidence that the Landlord has sought to restrict additional occupants, I dismiss the Tenant's claim.

As the Tenant's application has met with some success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Landlord is ordered to provide the Tenant with use of half the garage immediately.

The Tenants claims for rent reduction, repairs and the Landlord's compliance in relation to occupants are dismissed.

The Tenants claims for compensation and a restriction of the Landlord's entry are dismissed with 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 Act.

Dated: June 18, 2021

Residential Tenancy Branch