



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, OLC, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”) to reduce rent for repairs, services or facilities agreed upon but not provided, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making an unauthorized recording of this hearing.

The parties confirmed receipt of all evidence submissions.

Preliminary and Procedural Matters

In this case the tenant has filed 194 pages of evidence. However, a large part of the evidence is not related or relevant to the details written in their application. Therefore, I will only hear evidence that is related to the details in the dispute. Section 59 of the Act requires that the full particulars of dispute must be provided. I find to consider any issues not listed in the details of dispute would be unfair and prejudicial to the other party.

Issue(s) to be Decided

Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on August 31, 2018. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$550.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that they are seeking a retroactive rent reduction of \$300.00 per month because the landlord has not been dealing with the issues of their tenancy. The tenant stated that the neighbour next door has extended the height of the fence and has filled the cracks in the fence which blocks the sunlight. The tenant stated that the original shed has also been extended blocking their sunlight. Filed in evidence are photographs.

The tenant testified that although the landlord is not the owner of the subject property they should be filing a complaint with the engineering department as the engineering department will not accept a complaint from them, as it must be the owner of the property.

The tenant testified that the landlord is selectively enforcing clauses that do not exist in their tenancy agreement. The tenant stated that they had made a temporary structure within the rental unit, not a renovation and it is no different than having a table rest on the floor. However, they were ordered by the landlord to have it removed. Filed in evidence are photographs of the structure built by the tenant.

The tenant stated that because the landlord has served them with two warning letters, one for noise and the other to remove the structure, and they are not dealing with the neighbour they are retaliating and will be going after the landlord for all and any issue related to the tenancy.

The tenant testified that when they viewed the advertisement for the property it showed that a shed would be provided with the tenancy. The tenant stated when they viewed the property they were told that the shed would not be available for use for a period of time as the landlord had to make arrangements to remove the stored items, which this conversation was witnessed. The tenant stated that they were promised that the items would be removed.

The landlord's agent testified that they are not responsible for the actions of another property owner and cannot tell another property owner what they can or cannot do to their own property. The landlord stated that the other property owner has filled the

holes in the fence and added an extra panel of lattice to the fence for privacy issues. The agent stated they are not going to log any complaint against the neighbour as they do not see any problem with what they have done for their own privacy.

The landlord's agent testified that the tenant altered the rental unit by adding walls and creating a new room. The agent stated that they had the right to order that this structure be removed as they did not have the landlord's consent.

The landlord's agent testified that the shed was never included in the rent. The agent stated that the rental unit was not advertised with a shed and storage is not included in the tenancy agreement. The agent stated that the landlord has always kept the shed for storage of their personal items. Filed in evidence is a copy of the advertisement, and the tenancy agreement.

The tenant responded that they don't recall if the shed was in the advertisement; however, they can't confirm the accuracy of advertisement the landlord submitted as evidence as it could have been altered.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the tenant seeks a rent reduction and an order to have the landlord to comply with the Act because the neighbour has a shed, filled holes in the fence and has added lattice to the fence and claims that this has blocked the sunlight. The tenant stated that the landlord is not acting on their behalf and believes the landlord should be filing a complaint with the engineering department.

I have reviewed the photographs provided by the tenant. I find the tenants claim is unreasonable and appears to be frivolous. The owner of the other property has the right to do what they want with the fence. Clearly by looking at the photographs this was done for privacy issues. I find it would be unreasonable to grant any compensation. I also find it would be unreasonable to order the landlord to go to the engineer department to log such a frivolous complaint.

The tenants claims the landlord has violated the Act by making them remove a temporary structure they built in the rental unit, which the tenant claims is the same as having a table. I have reviewed the photographs provided by the tenant. The

photographs show that walls have been built to build a room, which appear to be covered in plastic.

I find the tenants reasoning that this is the same as having a table in the rental unit is not logical and is contrary to Residential Tenancy Policy Guideline 1, which states any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. This means any changes whether they are temporary or not. I find the landlord had the right to order the tenant to remove the structure they built as the tenant did not have the consent of the landlord.

I am also not satisfied the shed was provided as a term of the tenancy agreement. The advertisement provided by the landlord does not show a shed and the tenancy agreement does not provide for storage. Further, I find it is unreasonable to raise this issue nearly three years after their tenancy commenced. I find it more likely than not that the tenant is simply retaliating because they are unhappy being served warning letters and having to remove the interior structure.

Based on the above, I dismiss the tenant's application without leave to reapply. As the tenant was not successful with their application, I find the tenant is not entitled to recover the cost of the filing fee.

Conclusion

The tenant's application is 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: July 14, 2021