



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, RP, RR, LRE, PSF, OT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 8, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the *Act*;
- an order for regular repairs;
- an order granting a rent reduction;
- an order restricting the Landlord's right to enter;
- an order to provide services or facilities required by tenancy agreement or law;
- and
- a monetary order for damage or compensation;

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the Act.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. In this case, the Tenant has submitted an Application containing seven different claims, many of which are not related. As such, the Tenant determined that her claim for an order that the Landlord comply with the *Act* was the most important issue. The Tenant elected to withdraw the other claims which were included in the Application with the ability to reapply for such claims should she find it necessary.

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*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2017. Currently, the Tenant is required to pay rent to the Landlord in the amount of \$1,100.00 on the first day of each month. The Tenant paid a security deposit and a pet deposit each in the amount of \$500.00, for a total of \$1,000.00 of deposits currently being held by the Landlord.

The Tenant stated that she feels as though her right to quiet enjoyment of the rental unit is being breached by the Landlord. The Tenant identified four main areas of concern;

The Tenant stated that the Landlord entered the rental unit on September 3, 2021 without notice, while the Tenant was not home. The Tenant stated that she had installed video surveillance in her rental unit which capture the Landlord's entry. The Tenant provided a copy of the video in support.

The Landlord acknowledged that he did enter the rental unit, however, stated that he had notified the Tenant by email. Furthermore, the Tenant's roommate had also consented to the entry by text message. The Landlord stated that the purpose of the entry was to conduct an inspection of the rental unit.

The Tenant stated that the Landlord is also restricting her access to the beach from her rental unit. The Tenant stated that she would like to have beach access for her to walk her dogs. The Tenant stated that she is able to access the beach by passing through the Landlord's portion of the rental property. The Tenant stated that this should be considered common areas that could be accessed by the Tenant. The Tenant stated that alternatively, she is required to walk to the public beach access some distance away from the rental unit.

The Landlord stated that in order for the Tenant to access the beach from the rental property, she would have to walk along the Landlord's private walkways which was not part of the tenancy agreement. The Landlord stated that his son is allergic to dogs and that given the conflict throughout the tenancy, the Landlord feels its best that the Tenant only be permitted to use the portion of the property that she is entitled to, such as the rental unit and the fenced yard attached to it. The Landlord further stated that the Tenant can access the beach by walking two houses over.

The Tenant is concerned about the Landlord's communication and a confrontation in front of the neighbour. The Landlord stated that the Tenant is trying to spread rumours about him which are false. Both parties stated that they wished they had handled conflict differently during/ During the hearing, the parties agreed that email is the most appropriate and preferred form of communication between them.

Lastly, the Tenant is concerned regarding the Landlord's use of video surveillance on the rental property. The Tenant stated that she feels as though she is being watched by the Landlord, resulting in her keeping her blinds closed, and not wanting to make use of her backyard.

The Landlord stated that the video surveillance cameras were mounted prior to the start of the tenancy. The Landlord stated that the cameras are only used for security purposes as he had someone break into his shed. The Landlord stated that the cameras are situated in the parking area, and they do not monitor the Tenant's rental unit or yard.

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.

In relation to the Tenant's claim that the Landlord entered the rental unit without notice, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord did not receive permission from the other Tenant as claimed by the Landlord. 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.

With respect to the Tenant's claim that the Landlord is restricting her beach access, I find that the Tenant has provided insufficient evidence to demonstrate that beach access was provided as part of the tenancy agreement. While it may be more convenient for the Tenant to access the beach from the Landlord's portion of the rental property, I find that the Landlord has a right to privacy which he is entitled to. As such, I find the Landlord has not breach the Act, tenancy agreement, or regulations by asking the Tenant to use the public beach access located nearby.

The Tenant is also concerned regarding inappropriate conversation and confrontations that the Landlord has had with the Tenant. I am satisfied that during the hearing, both parties acknowledged that they could have handled conflict situations differently. Moving forward, the parties agreed that email communication related to tenancy matters is most appropriate. The parties are encouraged to remain professional and respectful during any future communications.

Lastly, the Tenant highlighted concerns regarding the Landlord's video surveillance system at the rental property. I accept that the Landlord has maintained video

surveillance even before the start of the tenancy for security purposes. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord's use of video surveillance impacts her privacy and enjoyment of the rental unit.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the Act. As such, the Tenant's claim for loss of quiet enjoyment 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: October 25, 2021

Residential Tenancy Branch