



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with a tenant's application for orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Both the landlord and the tenant appeared for the hearing. The tenant was accompanied by his spouse, who is also an occupant of the rental unit. The parties were affirmed and the parties were ordered to not record the proceeding.

I confirmed the parties exchanged their respective hearing materials upon each other and I admitted their materials for consideration in making this decision.

I have amended the style of cause to exclude the tenant's spouse as a named tenant. Upon review of the tenancy agreement and after hearing from all parties, I was not satisfied the tenant's spouse has standing as a tenant. Rather, I find the tenant's spouse is an occupant. During the hearing, it became apparent to me that there may be friction between the tenant's spouse and the landlord. As such, I suggested that in the future, communication with the landlord be made between the tenant and the landlord. If the tenant's spouse has issues to raise concerning the tenancy, rental unit, or residential property, she should raise them to the tenant, her husband, who in turn should deal with the landlord, and vice versa.

Issue(s) to be Decided

Is it necessary and appropriate to issue orders for the landlord to comply with the Act, regulations, or tenancy agreement?

Background and Evidence

The tenancy started in June 2016. The tenant's current rent obligation is to pay \$1530.00 on the first day of every month.

The residential property was described as being a house with a basement suite. The tenant rents the upper level of the house and the basement suite is also tenanted. There are laundry machines in the attached garage that both sets of tenants have access to. The tenant accesses the garage from the exterior garage door(s) and the basement suite tenant accesses the garage from an interior door that is off of the basement suite. The crux of the dispute concerns the tenant's use of the remainder of the garage space.

Tenant's position

Prior to the start of the subject tenancy, the tenant rented the basement suite from the landlord. During that previous tenancy, the garage space, except for the laundry area, was for use by the upper tenants. When the tenant and the landlord formed the current tenancy, the landlord told the tenant orally that the remainder of the garage area and the shed were for his use. Since the start of the subject tenancy the tenant has exclusively used the remainder of the garage space for storage except for one time the tenant gave the landlord permission to store a door in the garage.

In May 2021 the basement suite tenant placed an old unhygienic fridge in the garage at the landlord's instruction and the tenant's spouse complained to the landlord about this. In response, the landlord stated the garage space belonged to the landlord for the landlord's use.

The landlord subsequently demanded the tenant vacate his possessions from the garage space and the shed on the property or pay an additional \$400.00 per month for exclusive use of the space. The tenant proceeded to file this Application for Dispute Resolution seeking resolution.

The tenant requests that I make an order that the garage space, except for the laundry area, and the shed is for the exclusive use of the tenant. If unsuccessful in establishing the garage and shed are for exclusive use of the tenant, the tenant's alternative request is to continue to use the garage and shed for storage purposes.

Landlord's position

The landlord is of the position the garage space and the shed is for the landlord's use.

The landlord submitted that everything the tenant is entitled to receive under the tenancy is reflected in the written tenancy agreement and the tenancy agreement does not provide for the tenant to use the garage or shed for storage. However, the landlord also stated that she had allowed the tenant to use the garage and shed for storage as she had a good tenancy relationship with him. The landlord also stated that when the tenancy formed, she discounted the rent by \$65.00 per month to reflect their oral agreement that the tenant would be responsible for yard maintenance at the property.

The landlord testified that the landlord has used the garage for storage as well, such as during the time the basement suite was undergoing fire restoration work and the landlord did not need or obtain the tenant's permission to do so. The landlord also stored tools in the garage, such as a ladder, and there was no objection from the tenant as it has always been a shared space.

The landlord also stated that she picks up mail from the garage without giving a notice to enter as it is common space.

On May 9, 2021 the tenant's wife phoned her and was upset about the fridge that had been placed in the garage even though the landlord has instructed the basement suite tenant to place it there. The fridge placed in the garage was the landlord's fridge that had been in the basement suite. The tenant's wife demanded that the landlord have it removed from the garage without two hours or else it would be moved outside. The landlord found the tenant's wife's position unreasonable as it was a working fridge and putting it outside would damage it. The landlord has subsequently removed the fridge from the garage.

The landlord acknowledged that she demanded the tenant's possessions be removed from the garage if the parties did not re-negotiate their tenancy agreement to reflect exclusive use of the garage for \$400.00 more per month.

Tenant's response

The tenant pointed out that the landlord acknowledged entering into verbal agreements outside of the written tenancy agreement when she acknowledged the agreement for yard work to be done by the tenant.

The tenant refuted that the landlord used the garage for storage as much as she stated.

The tenant stated that he will not use the tools in the garage. Nor will the treadmill be used in the garage. The tenant only wants to use the space for storage.

Landlord's response

The landlord expressed concern that the tenant will use the tools and the treadmill in the garage, creating a workshop and a home gym, when she is not at the property to observe its use. The landlord suggested that the items stored in the garage be limited to things like food and toilet paper that the tenant has collected for donations.

Analysis

Upon review of the written tenancy agreement, I note there is no express provision for use of the garage or shed by the tenant or storage. However, the tenancy agreement provides for free laundry services and the landlord placed the laundry machines in the garage. The garage is accessed by both the tenant and the basement suite tenant to use the laundry machines. As such, I find the landlord's position that the garage is for landlord's use only to be unsupported. I also find the tenant's position that the garage is for his use exclusively is also unreasonable as the basement suite tenant is also permitted access to the garage and the landlord has accessed the garage from time to time without giving the tenant notice of entry. The Act defines "common area" under section 1 to mean: "any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants". Accordingly, I find it more likely than not that the garage is a common area.

Under section 28 of the Act a tenant is entitled to quiet enjoyment of the property, including, under paragraphs (d): "use of common areas for reasonable and lawful purposes, free from significant interference."

I heard undisputed testimony of both parties, that the tenant has been using the garage space for storage, without objection of the landlord, since the tenancy started until the tenant's wife complained and demanded the fridge from the basement suite be removed immediately. The landlord acknowledged she was aware of the tenant's use of the garage for storage as she had been in the garage multiple times to access mail, store the landlord's tools and construction materials; and, that she allowed it to continue. In

doing so, I find the landlord is now estopped from demanding the tenant cease using the garage for storage or start paying for it.

I appreciate the landlord's concerns that the tenant may use the garage as a workshop or as a home gym, and I accept that such activity in the garage was not anticipated or agreed upon. However, I also found the landlord's expectation that storage be limited to donated food and toiletries to be unreasonably restrictive. Therefore, I make the following authorization and order with a view to resolving this dispute over the garage in a reasonable manner:

I authorize the tenant to use a reasonable portion of the garage for storage purposes. Tools and exercise equipment may be stored but not used in the garage. However, the tenant must ensure there is sufficient space left in the garage to easily manoeuvre in the garage and that some storage space must remain available for the landlord.

I further order that the landlord cease demanding the tenant remove all of possessions from the garage or requiring him to pay additional rent for a reasonable amount of storage.

As for the shed, the landlord takes the position that the shed is not for the tenant's use under the tenancy agreement and it is for landlord's use; however, when I look at the photograph of the contents of the shed, I see mostly garden maintenance tools and equipment, such as: a lawnmower, rake, shovels, and the like. The landlord testified that the tenant is responsible for performing the yard work at the property but, in that case, I find it reasonable that yard maintenance tools and equipment continue to be stored in the shed and the tenant to have access to the shed. Therefore, I find the shed is intended for storage of yard maintenance tools and equipment and it should remain as such for access by the tenant. Accordingly, I authorize and order the following:

The shed is to be used for storage of yard maintenance tools, equipment and supplies and shall remain accessible to the tenant. The landlord must cease requiring the tenant to vacate the shed and/or requiring him to pay additional rent for use of the shed.

I order that parties to share in the cost of this proceeding. Since the tenant paid the \$100.00 filing fee, I order the landlord to compensate him 50% of this fee, or \$50.00. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in

satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

Conclusion

I have issued authorization and orders to both parties in this decision.

The landlord is to compensate the tenant 50% or \$50.00 of the filing fee. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

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: November 19, 2021

Residential Tenancy Branch