



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant applies for an order under s. 62 of the *Residential Tenancy Act* (the “Act”) that the Landlord comply with the Act, Regulations, and/or the tenancy agreement. The Tenant also seeks return of her filing fee pursuant to s. 72.

R.K. appeared on her own behalf as Tenant. J.C. appeared as support for the Tenant. J.C. provided no evidence at the hearing. P.S. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The parties acknowledged receipt of the other’s application materials and raised no objections with respect to service. I find that parties’ application materials and evidence were sufficiently served on each other pursuant to s. 71(2) of the Act.

Preliminary Issue – Amending the Style of Cause

At the outset of the hearing, I clarified with the Landlord’s agents who, in fact, was the Landlord. P.S. confirmed that he was a minority shareholder in the corporate Landlord and further confirmed that he was incorrectly named as the respondent in the Tenant’s application. The Tenant confirmed the corporate Landlord as stated in the tenancy agreement and further confirmed that she signs her rent cheques to the corporate Landlord as listed in the tenancy agreement.

Based on the parties' submissions on this point, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Issue(s) to be Decided

1. Should the Landlord be ordered to comply with the *Act*, the Regulations, and/or the tenancy agreement?
2. Is the Tenant entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on September 1, 2018;
- That rent of \$1,400.00 is due on the first day of each month; and
- That the Landlord holds a security deposit of \$700.00 in trust for the Tenant.

A copy of a written tenancy agreement was put into evidence by the parties.

The Tenant's rental unit is located on a coastal lot and is adjacent to another rental unit owned by the Landlord. The two rental units have separate house numbers and share a driveway, though the parties were unable to confirm whether the units were located on separate legal parcels. The Tenant's rental unit is on the upper portion and the other occupants' rental unit is adjacent to the shoreline.

The Tenant has raised various issues with respect to the conduct of the occupants of the neighbouring rental unit. These include issues with respect to the following:

- driving too quickly on the shared driveway;
- noise concerns from the other occupants' motorcycle;
- noise concerns from the other occupants' use of power tools in the other rental unit's garage;
- blocking the Tenant's access to the beach;
- light pollution from the other occupants' garage lights, which are left on during the night; and
- generally disrespectful conduct of the other occupants as alleged by the Tenant.

The Tenant says that an incident in December 2020 involved the other occupants nearly hitting her while they were driving down the shared driveway. The details of the incident are included in a letter dated December 7, 2020 that the Tenant sent to the Landlord's agent. The Tenant further states that on that occasion in December 2020 she was waiting for a tow truck when the other occupant sped up down the driveway and the Tenant had to quickly get out of the way. On the same occasion, the Tenant says that the other occupant blocked access to the tow truck driver.

The Tenant further highlighted issues with respect to potholes in the driveway that the Tenant says are caused by the other occupants.

The Tenant indicates that when her tenancy began, she had access to the beach. She says that the other occupants put up a gate to the beach in the spring of 2020 and that in August 2021 they began to lock that gate, thereby impeding her access to the beach. She says that the other occupants also installed a fence and video surveillance in August 2021. The Tenant submits photographs of the barriers.

The Tenant says that as part of her tenancy agreement, she was to have access to the beach. The Tenant stated that this is not in the written tenancy agreement and was a verbal understanding with the Landlord. The Landlord's agent denied the existence of a verbal term to the tenancy agreement permitting the Tenant access to the beach.

The Tenant further says that she has attempted to discuss her concerns with the other occupants, which went nowhere. She then began to forward her concerns to the Landlord as her interactions with the other occupants became hostile, in her view.

P.S. indicates that he has forwarded the complaints from the Tenant to the other occupants. He further indicates that the other occupants deny the various allegations raised in the Tenant's complaint. The other occupants tell the Landlord that the Tenant is the problem. The Landlord submits a letter into evidence from the other occupants sent to the Landlord in response to the Tenant's complaints. The letter emphasizes that the Tenant still has access to the beach and that the occupants have erected a "non-permanent property dividing structure". They emphasize that they are simply wishing to maintain their right to the quiet enjoyment of their rental unit.

P.S. hypothesized that the Tenant's relationship with the other occupants deteriorated after the summer of 2020. The Tenant had a guest stay in her trailer at the property for three months, which the Landlord authorized. The Landlord is said to have received a complaint from the other occupants regarding the Tenant's guest. The Landlord says issues between the Tenant and the other occupants began to arise subsequent to this.

The Tenant asks that the other occupants be evicted and cited ss. 45.1 and 47 of the *Act*. The Tenant further asked that if this is not possible, she asked that I provide direction to regulate the other occupant's behaviour. When asked which specific section of the *Act*, Regulations, and/or the tenancy agreement the Landlord has breached, the Tenant was unable to provide a specific response.

Analysis

The Tenant asks that I order that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement. As the applicant, the Tenant bears the onus of proving her claim on a balance of probabilities.

The Tenant says that it is part of her tenancy agreement that she has access to the beach. This is not in the written tenancy agreement. The Tenant says that it was a verbal term with the Landlord. The Landlord's agent denies that there is a verbal term of the tenancy agreement that permitted the Tenant access to the beach. Given this conflicting evidence, I cannot make a finding that such an oral term to the contract exists at all.

It is not clear to me based on the evidence that the Tenant shares the residential property with the other occupants as both have separate residential addresses and may very well be separate legal lots. I would question the enforceability of a term of any tenancy agreement that permitted a tenant to access a public space through a separate legal parcel in which another individual has exclusive possession. No evidence was put forward with respect to an easement to permitting the upper rental unit occupied by the Tenant access to the beach through the adjacent property.

The Tenant specifically mentions sections 45.1 and 47 of the *Act* and asks that the other occupants be evicted. Section 45.1 pertains to a tenant given notice to end a tenancy in instances where family or household violence exists. That is not relevant to the Tenant's claim under s. 62 of the *Act*. Section 47 outlines the grounds for which a landlord may choose to end a tenancy if any of the causes listed in that section exist.

The Landlord may choose to issue a notice to end tenancy to the other occupants under s. 47 or they may not. That is the Landlord's choice. I am not empowered to compel the Landlord to issue a notice to end tenancy under s. 47.

Finally, the Tenant seeks orders that the other occupants regulate their behavior. The *Act* permits me to decide disputes between landlords and tenants in residential tenancies. It does not permit me to decide disputes between occupants of the same residential property. The other occupants are not a party to these proceedings and did not have notice of these proceedings. Even if they were, I cannot adjudicate the Tenant's potential tort claims against the other occupants.

It is clear based on the parties' submissions that the Tenant and the other occupants are not on good terms. However, the dispute, if there is one at all, appears to be between the Tenant and the other occupants. I find that the Tenant was unable to demonstrate that the Landlord is in breach of any of their obligations imposed by the tenancy agreement, the *Act*, and/or the Regulations. Accordingly, the Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. As the Tenant is unsuccessful in their application, I further dismiss her claim for return of her filing fee without leave to reapply. The Tenant shall bear the costs of her own application.

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 01, 2022

Residential Tenancy Branch