



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Preliminary Issues

At the outset of the hearing the parties explained that the named respondent SM is an agent of the corporate landlord with whom the tenant has a tenancy. The parties agreed that DM is the spouse of SM but has never exercised the rights of a landlord under a tenancy agreement nor have they performed duties under the *Act*, tenancy agreement, or service agreement.

Based on the undisputed submission of both parties and Pursuant to Rule 4.2 I remove DM as a party to the present action. The style of cause for this decision has been amended accordingly.

At the outset of the hearing the parties confirmed that the address used in the application was incomplete and did not provide the suite number of the rental unit. The dispute address has been corrected for this decision.

Issue(s) to be Decided

Is the tenant entitled to any relief as sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that this periodic tenancy began in 2013. The current monthly rent is \$1,295.00 payable on the first of each month. The rental unit is a suite in a multi-unit high-rise building.

In their application for dispute resolution the tenant provides the following details of their claim for an order that the landlord comply with the Act, Regulations or tenancy agreement “Harassment, threats, being sworn at and called names, lying, not knowing proper protocol, my right to quiet and enjoyment, not complying with health mandates, kicking me out of my parking spot, etc”. The tenant has submitted some video and audio recordings and photographs in support of their claim.

The tenant gave testimony that they had an agreement with another occupant to store their canoe in the other occupant’s parking stall. The tenant says that storage of canoes was previously permitted but the landlord subsequently banned storage of canoes in the parking area.

The parties gave evidence about multiple noise complaints made by the tenant about their upstairs neighbor. The tenant submits that the landlord has not taken sufficient action, requiring the tenant to contact police or request the neighbors reduce the noise levels. The landlord submits that they have taken reasonable measures by issuing warning letters and logging the complaints that have been made.

Analysis

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to establish a claim on a balance of probabilities lies with the applicant.

Section 62(3) of the Act provides me with the power to issue orders for compliance where there has been a breach of the Act, regulations or tenancy agreement.

62 (3) 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.

Under the present circumstances I find insufficient evidence that an Order of compliance is appropriate. I find that it is beyond the scope of the Act to issue an Order prohibiting incidents of rudeness, hostile interactions or raised voices between the parties. While I accept the evidence that the relationship between the parties has been somewhat fraught recently, I find that I have no authority to issue an Order regarding name calling or hostility. I find it appropriate to caution the parties against letting tempers flare and attempt to remain civil, but I decline to issue an Order.

Similarly, I find it is beyond the scope of the Act to issue an Order requiring the landlord to wear a proper face mask in common areas of the rental building. While it is well-established that proper usage of face masks slows the spread of viruses and has been effective in curbing the ongoing Covid19 pandemic, and parties would be wise to continue wearing masks, I find I have no authority to issue such an Order.

I find no violation on the part of the landlord regarding the parking stall of another occupant which was previously used to store the tenant's canoe. The parties agree that there was no agreement between the tenant and the landlord permitting storage of the canoe and I find no clause in the tenancy agreement where the tenant is entitled to storage space for their canoe.

The tenant makes a claim that the landlord comply with the portion of the Act that a tenant is entitled to quiet enjoyment of the rental unit. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

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.

Based on the submissions of the parties I find little evidence that there has been any breach of the Act, regulations or tenancy agreement on the part of the landlord or a breach of the tenant's right to quiet enjoyment of the rental suite.

I find that there is little evidence that there has been noise at a level, frequency or type that could reasonably be characterized as a breach of the right to quiet enjoyment. I find the complaints of the tenant and their testimony that this has been an infrequent occurrence to be insufficient. I accept the submissions of the parties that the landlord has issued some warning letters and find their response to be appropriate and commensurate to the issue.

I find the tenant's application to consist of grievances and complaints which do not cumulatively or individually comprise a basis for a finding that there has been any breach on the part of the landlord. Consequently, I dismiss the application in its entirety.

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: June 14, 2022

Residential Tenancy Branch