



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 62 that the Landlords comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 65 that the Landlords provide services; and
- Return of their filing fee pursuant to s. 72.

J.B. and C.A. appeared as the Tenants. R.T. and J.M. appeared as the Landlords.

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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties both advised that they served the other party with their application materials and each acknowledged receipt of the other’s application materials. Neither side raised objections with respect to service. Based on the parties’ acknowledgement of receiving the other side’s application materials, without objection, I find that pursuant to s. 71(2) of the *Act* that each parties’ application materials were sufficiently served on the other side.

Issues to be Decided

- 1) Should the Landlord be ordered to comply with the Act, Regulations, and/or the tenancy agreement?
- 2) Should the Landlord be ordered to provide services?
- 3) Are the Tenants entitled to the 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 issues in dispute will be referenced in this decision.

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

- The Tenant took occupancy of the rental unit on April 1, 2017.
- Rent of \$1,421.00 is due on the first day of each month.
- The Landlords holds a security deposit of \$700.00 and a pet damage deposit of \$500.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence by the parties. A notice of rent increase was put into evidence showing rent was increased to the amount specified above on June 1, 2022.

The Tenants advise this dispute pertains to the use of a carport. The parties described the property as a single detached home in which the Tenants rent a basement unit and the Landlords reside on the main floor of the property. Photographs of the property were provided by the Tenants. J.B. advised that the rental unit is only accessible through a door opening into the backyard and that one can access the backyard through the carport. The Landlord confirmed that the only means of accessing the backyard is through the carport.

In the Tenants telling, the Landlords have restricted use of the carport. I was directed to a series of affidavits signed by third parties attesting to their understanding of the use of the carport. I was directed to a Notice Terminating or Restricting a Service or Facility form provided by the Tenants and signed by the Landlords on February 9, 2022. The Tenants say the Landlords have put tables across the entrance to the carport in April 2022 restricting access to the space. The Landlords deny restricting access outright and say that the Tenants still use the space for storage.

J.B. says that he operates a handyperson business and has used the carport for storage and projects. J.B. says that he had a verbal agreement with the Landlords that he would have the exclusive use of the carport, though admits that this is not explicitly stated in the tenancy agreement. The tenancy agreement shows that the tenancy includes access to 2 parking stalls.

J.B. further advised that he believes the issue arose with respect to the use of the carport in the fall of 2021. The Tenant was not specific, though says it was due to a renovation being undertaken by the Landlords. The Tenant says that there has been a breakdown in trust between he and the Landlords due to the carport dispute.

The Landlords deny that there was an agreement that the Tenants had exclusive use to the carport. In their telling, the Tenants began to make extensive use of the carport beginning in March 2020. The Tenant admits that there was a slow down in his work in the spring of 2020 due to the pandemic. The Landlords say that the Tenant has disassemble vehicles in the carport and progressively enclosed the space. They say that they commute via bicycle and that it was challenging to access the backyard due to the extent the Tenant made use of the carport. R.T. further argued that leaving vehicles propped on jacks for extended periods was an occupier liability issue.

R.T. further testified that they attempted to accommodate the Tenants use of the space by setting limits, including permitting storage shelves and a collapsible table being attached to the house as a workbench. The understanding, according to R.T., was that the workbench would be collapsed when not in use. The Landlords say that it was not collapsed as the Tenants left items on the workbench. Again, the Landlords emphasized that this caused access issues to the backyard.

R.T. indicated that the carport is at the end of a driveway that measures 45' long and is 10' wide. The Landlords argue that there is sufficient space to park two vehicles on the driveway. This was not denied by the Tenant.

The Tenants advise that they do not seek return of the carport due to the breakdown in trust and seek a rent reduction in the amount of \$1,000.00 per month, which they say is what it would cost to rent a garage within the area. The Tenants provide a series of advertisements for garage rentals in their area. The Landlords argue this is disproportionate to the total rent paid and would amount to nearly wiping out the Tenants' obligation to pay rent under the tenancy agreement.

Analysis

The Tenants seek orders related to the use of a carport, specifically that the Landlords comply with the *Act*, Regulations, and/or the tenancy agreement and that the Landlords provide services.

Both orders under ss. 62 and 65 of the *Act* require an initial finding that a landlord has failed to comply with the *Act*, Regulations, or the tenancy agreement. As this is the Tenants' claim, they bear the burden of proving their claim on a balance of probabilities.

In the present instance, the Tenants essentially allege that the Landlords have breached the tenancy agreement by removing their access to the carport. The issue with the Tenants' allegation is that the tenancy agreement is silent with respect to the use of the carport. The tenancy agreement specifies that the rental unit has 2 parking stalls. That is all.

The Tenants argue there was a verbal agreement that they could use the carport for their exclusive use. This is specifically denied by the Landlords. It is uncontested that the sole means of accessing the backyard from outside is through the carport.

The photographs provided by the parties indicate an increase in the use of the space by the Tenant following March 2020. Photographs dated by the Tenants as being from 2017 do not have structures attached and the space is relatively open. This continued until 2020 by which point more items began to be stored and the space became progressively closed off. The space appears to have been entirely closed off with tarps in December 2020. The Tenant J.B. admits that the pandemic affected his work. By implication, it is likely that the pandemic had an impact on the Tenants' use of the carport, which would appear to have intensified after March 2020.

I have reviewed the witness statements provided by the Tenants. They all use the same wording, and all indicate their understanding of the agreement. With respect, the understanding of third parties to the contract is not relevant to determining the parties' intentions when the tenancy agreement was signed, namely whether the Tenants had exclusive use of the carport.

I do not believe it credible that the Landlords would have permitted the Tenants to use the carport for their exclusive use if they required to pass through the space to access the backyard. Even such transitory access would run afoul of the Tenants' presumable

right to the exclusive possession of the space if it had been part of the rental. It is far more likely that the tenancy agreement was silent because there was no understanding between the parties on the use of the carport. That would correspond to the conduct of the parties, specifically that it was common property.

Based on the parties' submissions, the issue arose due to the Tenants increased use of the carport after March 2020. I find it likely that the Tenants began to monopolize use of the shared carport after March 2020 to an extent that it began to run contrary to the shared use of the space prior to that point. The Landlords' restrictions to the carport in the spring of 2022 was their attempt to correct the Tenants monopolization of the shared space. The Landlords state and I accept that the Tenants still have access to the space for storage, though they have restricted the Tenant's otherwise exclusive use of the carport.

The tenancy agreement specifies that 2 parking stalls are to be provided as part of the tenancy. The Landlords provide undisputed evidence that the driveway is long enough for two vehicles to park. Limiting access to the carport, as done by the Landlords, does not, in my view, breach the requirement under the tenancy agreement that parking for 2 vehicles be provided.

I find that the Tenants have failed to establish that they had exclusive use of the carport. Correspondingly, I find that the Tenants have failed to demonstrate that the Landlords breached the *Act*, Regulations, or the tenancy agreement in any way by limiting the Tenants use of the carport.

The Tenants claims under ss. 62 and 65 are, therefore, dismissed.

Conclusion

The Tenants have failed to establish that the Landlords breached the *Act*, Regulations, or the tenancy agreement. Their claims under ss. 62 and 65 are dismissed without leave to reapply.

As the Tenants were unsuccessful in their application, I find that they are not entitled to the return of their filing fee. Accordingly, their claim under s. 72 of the *Act* 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 12, 2022

Residential Tenancy Branch