



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, DRI, 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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Tenants abandon claims

At the outset of the hearing on March 8, 2022, the tenants advised that they would be abandoning all of their claims except their request to have the fence repaired and the recovery of the filing fee, accordingly; I dismiss the remainder of the tenants application without leave to reapply.

Issue(s) to be Decided

Should the tenants be granted an order to have the landlord conduct repairs to unit or site?

Should the tenants be granted the recovery of the filing fee from the landlord?

Background and Evidence

CLJ gave the following testimony and submission on behalf of the tenants. The tenant testified that the tenancy started on March 15, 2013. The tenant testified that the landlord has refused to repair an aging and deteriorating fence. The tenant submits that the property fences have been in significant disrepair for some time. The tenant submits that a request was made in 2019. The tenant submits that her dog has escaped several times. The tenant testified that a recent request for a side fence due to dog getting through and engaging in physical fight with neighbors' dog causing injury was ignored. The tenant testified that the neighbor has stated if it occurs again a lawsuit will be filed. The tenant submits that reason that they rented this property was due to the large yard and the ability to have a dog. The tenant testified that the landlord is refusing to make repairs and therefore is in breach of the Act.

The landlord gave the following testimony and submissions. The landlord bought the house in 1996 with the original fence still in place. The house was built in 1940. The landlord testified that the tenants are responsible for their dog and that its not her responsibility to fortify the property to restrain the dog from making attacks on other dogs. The landlord testified that she is not even sure who the fence belongs to. The landlord testified that the existing fence is sufficient and that there has been no significant change in the condition of the fence since the tenants moved in.

Analysis

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 relationship between the parties is an acrimonious one. Each party made allegations of the other not being truthful. This hearing was conducted on two separate occasions. It is worth noting that at the outset of the March 8, 2022 hearing, the tenants advised that they were abandoning all claims except to have a repair order issued to compel the landlord to fix the fence on the property and the recovery of the filing fee.

However, on the August 9, 2022 hearing date, each party brought up the issues originally applied for during the hearing as well as adding other issues including notices to end tenancy, late payment of rent and an installation of a fireplace. In addition, the parties continually referred to another ongoing hearing regarding ending the tenancy. I attempted to advise the parties to stay on point and address the issues at hand without restricting their ability to submit their position or interrupt or limit what they could speak about. The landlord was under the assumption that she had a “cross claim” and that I could issue an order ending the tenancy. I explained that the only issues that I could address were those that tenants originally applied for and since the tenants abandoned all claims except for the fence repair and filing fee, I am **only required to address** the tenants request for an order to have the landlord make repairs to the fence and the filing fee.

Fence Repair

When a party files an application they bear the responsibility to provide sufficient evidence to support their claim. The tenants submit that a fence is required on the property and that the landlord should be ordered to provide one. The landlord submits that the existing fence is sufficient and that if the tenants want a new one, they should pay for it. In addition, the landlord submits that it is the tenant’s responsibility to control their dog.

After careful consideration of the testimony of the parties and review of the pertinent documents I find that the tenants have not provided sufficient evidence to have an order issued to have the landlord make any repairs to the existing fence or to provide a new

one. The documentation submitted by the tenants is lacking and insufficient, their simply wasn't enough evidence to substantiate or support their claim.

The tenants are not entitled to the recovery of the filing fee as they have not been successful in any part of their application.

Conclusion

The tenant's application is dismissed in its entirety 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: August 9, 2022

Residential Tenancy Branch