Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RP, LRE, PSF, FFT, DRI-ARI-C

Introduction

The tenants seek various relief under the *Residential Tenancy Act* ("Act").

Attending the dispute resolution hearing were both tenants and both landlords (one of the landlords is more of a representative of the co-landlord, who is her elderly non-English-speaking mother and owner of the property). The parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Issue

Are the tenants entitled to relief under the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 15, 2021 and rent is $1,350.00. According to the tenants, they rent the upper floor of a two-level residential home and have use and access to various common areas around the property. However, the landlord asserts that the tenants *only* rent the approximately 800 ft^2 upper floor and do have the use of any common areas to store personal belongings.

One of the tenants is a carpenter and has various tools and materials related to his profession. It was the tenants' understanding both before and during the tenancy that they would be able to store these tools and materials outside, in the common area. The landlord, though, does not want them to store these things. The parties would like a resolution and determination of where they stand on this issue.

The written tenancy agreement, on page one, indicates that the place being rented is "UPSTAIRS UNIT (800 SQFT)" and then the residential address is listed. The agreement also indicates on page two that there is parking for two vehicles. An eight-page addendum indicates that the place being rented is the upstairs suite and that "the rest of the areas in the house will be common areas belong [*sic*] to landlords' private property [. . .]" On page four of the addendum, there is a term that specifies no personal belongings are permitted in the open garage. The tenants argue that the landlord is preventing them from any reasonable use of the outside areas. The landlord testified that the tenants are, quite simply not allowed to store anything outside of the rental unit.

A second issue that the tenants have requested resolution is that the stairs be repaired, and mold be dealt with. Third, the tenants dispute the landlords' request to charge additional fees for parking any additional vehicles. There were also additional issues with the landlords apparently wanting to charge a key deposit. Fourth, the tenants would like a lock repaired.

The landlord disputes these claims and she testified that the mold was simply dirt on the wall. It has since been cleaned. She claims that the tenants damaged the lock and that they are therefore responsible for its repair. As for the stairs, she explained that it was built to code as the building code existed when the house was built about 60 years ago; she is not required, she remarked, to bring the construction up to modern building code standards.

Analysis

1. Claim for Repairs

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, I am not persuaded on a balance of probabilities that the landlords must repair the stairs—they appear to be in working order, based on the photograph provided into evidence. Nor am I persuaded that the landlords are responsible for the locks that, by all accounts, the tenants were responsible for. Last, I am not persuaded that the landlords are further responsible for "mold," which appears to be dirt. In short, I am not persuaded that the evidence proves the landlords breached section 32(1) of the Act.

This aspect of the tenants' application must therefore be dismissed.

2. Claim for Order Suspending/Setting Conditions on Landlord Entry

There is no evidence before me to find that the landlords have breached section 29 of the Act. No evidence exists that supports an argument that the landlords have entered the rental unit in violation of the Act. It is worth noting that the description of this aspect of the application is unclear as to the actual breach: “WE DON'T ALLOW TO PUT ANY OUR ITEM IN THE COMMON AREA AND AT THE SAME TIME OUR LANDLORD HAS BUNCH OF JUNK EVERYWHERE.”

A careful review of both the written tenancy agreement and the addendum leads me to find that the rental unit consists solely of the floor in which the tenants’ suite is located. Nowhere in either the tenancy agreement or the addendum does the rental unit extend to areas outside of the suite. For these reasons, and because a landlord is entitled to access a common area without providing notice, this aspect of the tenants’ application must be dismissed.

3. Claim for Provision of Services and Facilities

As with the claim for repairs, there is no persuasive evidence before me to find that the landlords have not provided services and facilities agreed to in the written tenancy agreement and the addendum. Therefore, this aspect of the tenants’ application is dismissed.

4. Claim to Dispute Additional Rent Increase for Capital Expenditures

Regarding this aspect of the tenants’ application, it is my finding that the landlords have not imposed any additional rent increases for capital expenditures (which are made under section 23.1 of the *Residential Tenancy Regulation).* As such, this aspect of the tenants’ application is dismissed, as there is no basis on which a dispute of this nature may be made under the circumstances.

5. Claim for Recovery of the Application Filing Fee

Given that the tenants have not been successful in their application they are not entitled to recover the cost of the application filing fee, and this aspect of their application is therefore dismissed.

Findings on Related Issues

Last, for the purposes of resolving the underlying issues, the landlords are entitled to restrict and prohibit the tenants from storing any of their personal property anywhere outside the rental unit. This is clearly stated in the tenancy agreement and addendum.

That having been said, I would encourage the landlords to consider finding a solution to the tenants' storage issues. After all, there appears to be a fair amount of space on the property that might facilitate this.

As for the key deposit, the landlords are not permitted to request this fee during the tenancy, pursuant to section 6(2) of the *Residential Tenancy Regulation.* Finally, there is nowhere in the tenancy agreement or addendum a term permitted the landlords to charge a parking fee; however, this issue does not appear to be a problem, as there are no additional vehicles.

Conclusion

For the reasons outlined above, the tenants' application is hereby 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 Act.

Dated: August 2, 2022

Residential Tenancy Branch