



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, FFT

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on May 11, 2022 seeking the Landlord’s compliance with the legislation and/or the tenancy agreement. Additionally, they want to “suspend or set conditions on the landlord’s right to enter the rental unit . . .” and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 20, 2022. I explained the process and the attending party had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – hearing notification to Landlord

The Tenant attended the hearing, and I provided them the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution Proceeding (the “Notice”) for this hearing. This means the Tenant must provide proof that they served the Notice using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out – in affirmed testimony -- that they served this Notice to the Landlord in person on May 27, 2022. The Landlord lives in the same rental unit home where the

Tenant resides. This included the prepared evidence documents they present in this hearing.

Based on these submissions, I accept they served the notice of this hearing in a manner complying with s. 89(1)(a) of the *Act*. The hearing thus proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Landlord bound to comply with the *Act* and/or tenancy agreement, pursuant to s. 62 of the *Act*?

Is the Tenant entitled to suspension or set conditions on the Landlord's right to enter the rental unit, pursuant to s. 70 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant presented a copy of the tenancy agreement they signed with the Landlord on October 5, 2021. This was for the tenancy starting on January 1, 2022, for a set term ending on July 31, 2024. The Tenant pays \$2,500 per month due on the first day of each calendar month, including utilities. Of relevance to this hearing are the following terms in the agreement, set out on page 5 item 13:

- For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- The landlord may enter the rental unit only if one of the following applies"
 - at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice . . .
 - there is an emergency and the entry is necessary to protect life or property
 - the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry
 - the tenant has abandoned the rental unit
 - the landlord has an order of an arbitrator or court saying the landlord may enter the rental unit.

- the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.
- If a landlord enters or is likely to enter the rental unit illegally, the tenant may apply for an arbitrator's order . . . to change the locks, keys, or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit.

On page 1 of the agreement, the “rental unit” is defined by the street number and street name, being a house, and not divided by a unit number or sub-section of that house.

The Tenant described the rental unit as a two-level house with a basement, to which they have access to approximately one-half of the main floor, and the second-level upstairs 4 bedrooms and 1.5-size bathroom. The basement is occupied by other tenants, approximately 4 or 5 people. The Landlord occupies one-half of the main level, including the living room, another bedroom, and the bathroom. The landlord occupies this space with another person whom the Tenant here described as “the first-floor tenant.”

The Tenant has two children of their own, so they described this as an “odd situation”. They stated that the Landlord's motivation in this arrangement is to collect rent from others who are living in the rental unit.

In their evidence the Tenant provided a layout map of the first floor of the rental unit. This shows a red-shaded area as that occupied by the landlord. The Tenant on this document set out that the landlord “added 3 partitions without [the Tenant's] permission, so the area marked in red is occupied by the landlord, and we can not use that area.” There is a centre grey-shaded area that includes the laundry room and garage; this is accessible to other people living in the basement, and the landlord and “the first-floor tenant.” They also have no exclusive access to the backyard, and other residents and the Landlord can easily see within the Tenant's space, causing a lack of privacy.

They paid no rent for January 2022 even though the agreement started from that date, and their rent was reduced for February because they moved into the rental unit on February 20. The Landlord told them from the outset that other people were living in the rental unit. They present that since March 2022 they have been in the rental unit, paying full rent, with other tenants coming and going, for example on a three-month basis.

The Tenant also presents that they are feeling a low temperature throughout the rental unit – when they set the temperature, the Landlord who lives in the living room sets that

temperature lower. Also, the internet signal is weak due to the placement of the hardware for that purpose, and they do not have exclusive use of the laundry machines which means others are using the machines at any time. They noted communication from the Landlord that touched upon either an eviction of the Tenant, or sale of the rental unit.

The Tenant set out that the ideal situation for them would be:

- for the “first floor tenant” to move out,
- the residents in the basement must move out – if not accomplished, the Landlord should compensate the Tenant with rent.
- exclusive access to the mailbox that is currently shared with the other residents and the Landlord
- a change of the locks
- move the internet hardware so the Tenant can control that
- exclusive temperature control
- exclusive access to the laundry machines.

The Tenant in sum requests the “first floor tenant” and basement residents vacate the rental unit. The Tenant is agreeable to the Landlord continuing to live there, with restrictions in place. They did request that if the Landlord continues to live in the rental unit, they would like a reduction in rent.

Analysis

Applicable to the current scenario in this tenancy are the following sections of the *Act*:

16: The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into

28: A tenant is entitled to quiet enjoyment, including:

- reasonable privacy
- freedom from unreasonable disturbance
- exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with s. 29
- use of common areas for reasonable and lawful purposes, free from significant interference.

29: a landlord must not enter the rental unit for any purpose, unless the tenant gives permission, or they provide to a tenant 24 hours written notice

30: a landlord must not unreasonably restrict access to residential property by the tenant

In summary, I find that in this current tenancy the Landlord is breaching each section of the *Act* listed above. This means the Landlord is also breaching the terms set out in the tenancy agreement that mirror those of the *Act*. This situation must immediately end the Landlord's access and allowance of other tenants in this arrangement in the rental unit is illegal.

The Tenant testified that they entered the rental unit on February 20; however, as set out in s. 16 their right to exclusive possession and quiet enjoyment began prior to that. The Landlord was obligated to ensure whomever else was residing in the rental unit, or occupying part of it, was gone so that the Tenant here had exclusive access.

I find a rent reduction is appropriate here, and grant an award to the Tenant retroactively for the infringement on their exclusive access to the rental unit. I reduce the Tenant's rent by one-half, given that they have no access to the basement, and approximately one-half of the main level. This amount, to be paid by the Landlord to the Tenant directly, is \$1,250 x 7 months (March to September) = \$8,750. I grant this amount to the Tenant in a monetary order, with the authority of the *Act* s. 65(c)(i).

Going forward, the Tenant shall pay only this one-half rent amount until the Landlord ends whatever arrangement they have with other residents in the basement, and they are fully vacated from the rental unit, meaning the Tenant has exclusive use of the basement area at the house. Also, the Landlord must ensure the "first floor tenant" is also evicted. This one-half rent amount is granted to the Tenant until all other occupants at the rental unit home, including any of their personal property, are out. I grant this reduction in rent to the Tenant with authority from s. 65(c)(ii).

The Landlord must apply to the Residential Tenancy Branch for authorization to collect the full amount of rent. This means the Landlord must prove, with evidence, that they are complying with the *Act* and the tenancy agreement, in granting exclusive access to the Tenant as per s. 28.

This measure also acknowledges that other aspects of the Tenant's right to quiet enjoyment -- including reasonable privacy and freedom from unreasonable disturbance

-- have also been consistently breached by the Landlord and other occupants, since they moved into this rental unit.

I order the Landlord to ensure further measures are in place for the Tenant, to ensure neither the Landlord nor any other occupant at the rental unit home infringe on the Tenant's right to quiet enjoyment:

- separate heating control for separate heating components that the Tenant controls exclusively, whether this be the heating system in place at the rental unit home, or other portable heating units to ensure their comfort
- separate hardware for internet access, whether a separate internet connection for their exclusive use, or extra hardware to boost the internet service within the rental unit home
- exclusive use of the mailbox for their own mail – no conditions or exceptions
- exclusive use of the laundry space and machines, or separate machines set aside elsewhere for their own exclusive use, not shared with any other occupants
- a change of locks to the rental unit, ensuring their exclusive access to the rental unit house, with no copy of the keys given to other building occupants – this should ensure the Tenant's own exclusive use of the rental unit house.

My understanding is that these measures may be accomplished through the Landlord ensuring other rental unit house occupants are gone from the rental unit. Should the Landlord not effect the end of those other occupants' continued stay, the Tenant may apply for further monetary compensation due to a continued breach of their right to quiet enjoyment.

The Tenant graciously granted the Landlord access to the rental unit, and even concedes to the Landlord continuing their living arrangement in that rental unit house. I advise the parties against this measure because, strictly speaking, it runs counter to the Tenant's right to exclusive possession of the rental unit. A landlord's entry is strictly controlled by s. 29 of the *Act*. The situation granted by the Tenant here has the potential for a number of exceptions to their rights to arise, and they may face difficulty should they need to ensure their rights are protected in the future with this concession to the Landlord in place. For this reason, I dismiss the piece of the Tenant's Application where they request suspension or set conditions on the Landlord's right to enter the rental unit.

In summary, the Landlord must pay the amount of \$8,750 to the Tenant for the past infringement on their rights, and the Tenant shall only pay one-half of the rent amount

going forward. The Landlord must ensure the other rental unit house occupants are gone, and ensure other measures listed above are complete. Anything less constitutes a continued breach of the Tenant's s. 28 right to quiet enjoyment.

I find the Tenant was successful in this Application; therefore, I grant reimbursement of the Application filing fee to them.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$8,850, for past reduced rent and recovery of the Application filing fee. I provide the Tenant with this Monetary Order in the above terms, and they must serve this Money Order to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order with the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

For the reasons above, I order the Landlord to comply with the *Act* and the tenancy agreement by following specific terms set out above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 29, 2022

Residential Tenancy Branch