



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on July 19, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An order restricting or setting conditions on the Landlords; right to enter the rental unit or site;
- An order for the Landlords to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on December 12, 2022, and was attended by the Tenant, the Tenant's spouse R.S., the Landlords and the Landlord's adult child R.D., who functioned as their agent. All testimony provided was affirmed. As the Landlords acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from

speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order restricting or setting conditions on the Landlords' right to enter the rental unit or site?

Is the Tenant entitled to an order for the Landlords to comply with the Act, regulations, or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although the parties agreed that the garage was not included as rented to the Tenant under the tenancy agreement, they disagreed about why. The Tenant argued that they believed the Landlords simply wanted to maintain access to and possession of the garage for storage purposes. The Landlords and their agent disagreed, stating that the Tenant was aware prior to the signing of the tenancy agreement that the garage had been converted into a suite and was occupied by a close family member of the Landlords, who is also one of the owners. The Tenant denied any knowledge of other occupants at the property at the time of signing the tenancy agreement, stating that they believed they had rented the entire property, except for the garage, and that they only became aware that there were people living in the garage approximately 5 days after they moved in.

The Tenant argued that the encroachment of their use of the property by the occupant(s) of the garage suite, and the Landlords has become excessive, as they have

installed a washing machine on a pathway outside their living room window, and that the use of the washing machine and the back yard by the occupant(s) of the garage suite is making them uncomfortable, disturbing their right to quiet enjoyment of the property rented to them under the tenancy agreement, and devaluing their tenancy. The Tenant stated that they were also not forewarned about the installation of the washing machine, resulting in the loss of an important time-limited job application due to the need to disconnect power for its installation, and that the noise caused by its use is significantly disturbing their right to quiet enjoyment as it is right outside their living room window. The Tenant also stated that because of the installation of the washing machine in the summer of 2022, and an air conditioner for the garage suite, the electrical system/panels for the home are overloaded and fuses frequently blow. The Tenant stated that this is especially inconvenient for them as the electrical panel is in the garage, an area they do not have access to.

As a result, the Tenant sought an Order that the Landlords comply with the Act and provide them with exclusive use and possession of the property, except for the garage, and an order that the Landlord protect their right to quiet enjoyment by removing the washing machine or restricting the times during which it may be used and restricting access to the exterior portions of the property by the occupants of the garage suite and the Landlords.

The Landlords and their agent argued that the entire property was never rented to the Tenants and that there was a verbal agreement in place for the yard and exterior portions of the property to be shared with the occupant(s) of the garage suite. As a result, they stated that the Tenant is not entitled to exclusive use and possession of the exterior portions of the property.

The Landlords and their agent argued that it would be unreasonable to restrict access of the garage suite occupants to the washing machine and denied that it is causing any disturbance. The agent stated that they are a red seal certified electrician and that they installed the washing machine. They stated that there are no issues and that the Tenant is exaggerating the frequency of any blown fuses.

Analysis

The tenancy agreement in the documentary evidence before me provides only a street address, not a unit number, for the property. It also contains no terms or addendums stating that the Tenant does not have exclusive use of the entire property. However, as the parties agreed that the garage was not rented to the Tenant under the tenancy agreement, I accept this as fact.

Although the Landlords and agent stated that the exterior portions of the property were always to be shared with the occupant(s) of the garage suite by way of a verbal agreement, the Tenant denied that such an agreement existed. Further to this, the Tenant denied any knowledge that the garage contained a suite that was occupied until after they had already signed the tenancy agreement and moved in. Given the dispute between the parties regarding what was and was not rented to the Tenant under the tenancy agreement, I have turned to the documentary evidence before me, specifically the written tenancy agreement, to resolve this dispute.

The tenancy agreement lists only a street address, and the parties agreed that the structure where the rental unit is located is a single-family home with an attached garage. Although the Landlords and their agent argued that the Tenant was aware at the time the tenancy agreement was entered into that the garage had been converted to a suite and was occupied, as they wanted to be transparent, I am not satisfied this is the case. The Tenant denied any such knowledge, and the tenancy agreement does not reflect that any portion of the property is to be shared with other occupants. The Landlords also submitted no documentary evidence in support of their position that they advised the Tenant prior to entering into the tenancy agreement that the garage was occupied and that any portions of the property were to be shared with those occupants. I am therefore satisfied that the Tenant's belief that they had rented the entire property, except for the garage, was not only reasonable, but accurate. As a result, I make the following order:

- **I order** that the Tenant is entitled to exclusive use and possession of the entire property, including the yards and all exterior areas and walkways, except for the garage, as the parties agreed that the garage was not rented to the Tenant.

Despite the above, it is clear to me that there are occupants residing in the garage. I therefore make the following orders:

- **I order** that the Landlords ensure that the occupants of the garage suite are only using the exterior portions of the property to come and go from the garage suite.
- **I order** that the Landlords ensure that the occupants of the garage suite are using only the exterior portions of the property necessary for them to come and go from the garage suite.
- **I order** that the Landlords ensure that the use of the exterior portions of the property by the occupants of the garage suite to come and go from the property does not unreasonably disturb the Tenant or significantly interfere with their use and quiet enjoyment of the property.
- **I order** the Landlords to have the occupants of the garage suite cease using the washing machine located outside of the Tenant's window effective immediately.
- **I order** the Landlords to have the washing machine located outside of the Tenant's window removed not later than 30 days after the date of this decision.
- **I order** the Landlords to give notice to the Tenant in compliance with section 29 of the Act for the purpose of entering the property to remove the washing machine.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. The Tenant is permitted to make a one-time deduction of \$100.00 from the next months rent payable under the tenancy agreement, or to serve and enforce the attached Monetary Order issue pursuant to section 67 of the Act, but not both.

Conclusion

I grant the Tenant's Application and I order the Landlords to comply with my above noted orders. The Landlords are cautioned that failure to do so may give rise to a claim by the Tenant for monetary compensation and/or an administrative penalty up to \$5,000.00 per day that they remain in non-compliance with my orders.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this

Monetary Order, the Tenant may make a one-time deduction of \$100.00 from the next months rent payable under the tenancy agreement, should they wish to do so.

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

Dated: December 12, 2022

Residential Tenancy Branch