



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 9, 2022. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

The Landlord and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence. The Landlord did not submit any evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to an order that the Landlord comply with the Act, or the Tenancy Agreement?

Background and Evidence

The Tenant stated that she has lived in this unit for around 10 years now. The rental unit is the upper floor of a house, and the lower unit is rented separately to another individual, J.A. The Tenant stated that she has not had any issues with any of the previous Tenants who lived downstairs. However, the Tenant stated that in October of 2021, when J.A. moved in, she began having issues.

The Tenant explained that J.A. is a “hoarder” and he has accumulated many belongings that are stored in common areas of the property. The Tenant stated that due to J.A.’s hoarding issues, the city got involved and have now asked for the lower suite to be decommissioned (the stove removed).

During the hearing, the Tenant spoke generally about the fact that she has over 20 police files against J.A. for his behaviour, and because he is antagonizing her. The Tenant stated that J.A. has been smoking in the house, and no smoking is allowed, although she did not point to any part of the tenancy agreement to support this.

The Tenant stated that J.A. has done egregious things to her, and has put feces on her car, threatened her, tried to scare her by staring in her windows, prevented her from accessing the shared laundry, turned off her power, water, and heat (he has controls given he is in the downstairs of the house where the connections are managed). The Tenant also pointed out that J.A. has prevented her from accessing shared garbage facilities.

The Tenant stated she just wants to live in peace, and she wants the Landlord to take action against the lower tenant, J.A. The Tenant did not speak to or present any of her documentary evidence.

The Landlord stated that he cannot do anything more because this is an issue between two tenants, and does not involve him. The Landlord stated that both Tenants have asserted that the other Tenant is being “mean”, and he wants everyone to start being polite and respectful. The Landlord stated he has spoken with the Tenant downstairs, generally, and he said he was going to look for a new place to move to, but he also stated he has been unable to procure a new space to live.

Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

According to the Rules of Procedure, evidence in the Dispute Resolution Proceeding must be presented by the party who submitted it. In this case, the Tenant uploaded some documents and video files. However, she did not refer to and explain any of her documentary evidence. Rules of Procedure state:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

In this case, the Tenant failed to sufficiently present her documentary evidence and only spoke, somewhat generally, to issues she is having with the Tenant who rents the lower suite in the house. The Tenant alleges that J.A.'s behaviour has become disruptive to her quiet enjoyment, and he has done egregious things such as putting feces on her car, threatening her, scaring her by staring in her windows, preventing her from accessing the shared laundry, turning off her power, water, and heat for many hours at a time (he has controls given he is in the downstairs of the house where the connections are managed). The Tenant also pointed out that J.A. has prevented her from accessing shared garbage facilities.

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This

includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, the Landlord acknowledged that he was made aware of some of the Tenant's complaints against J.A. The Landlord stated he has spoken with J.A. but J.A. asserts the Tenant is part of the problem, since she is "mean". The Landlord did not clearly articulate what exactly he discussed with J.A. when he talked with him. However, given the seriousness and severity of the Tenant's allegations, I find the Landlord's approach is insufficient, and ineffective. More specifically, and as noted above, the Landlord is obligated to ensure the Tenant's right to quiet enjoyment is protected, and he is required to take reasonable steps to address or correct unlawful or inappropriate behaviour.

The Tenant has made several serious allegations and complaints about J.A.'s conduct, and the Landlord has not clearly articulated what, if any, steps he took to understand and investigate the Tenant's concerns, other than the brief conversation he stated he had where J.A. also said the Tenant was "mean". Given the nature and extent of the Tenant's complaints against J.A., and given the lack of evidence showing the Landlord has followed up in a fulsome and thorough manner, I Order the Landlord to follow up, forthwith, with both Tenants, to investigate the veracity of the allegations being made, and determine if either Tenant's quiet enjoyment has been breached or if further action or follow up is warranted. The Landlord is obligated to take steps to correct the issue if there is credible information showing that there has been an unreasonable disturbance or interference and a breach of section 28 of the Act.

I find it important to note that if the Landlord fails to take sufficient and reasonable steps to correct a problem, after being made aware of it, he may be held responsible for any subsequent loss of quiet enjoyment or related damages. Any potential compensation related to a loss of quiet enjoyment would need to be separately applied for, and is not part of this application.

Given the Tenant was partly successful in her application, I award her the recovery of the filing fee paid. The Tenant may deduct \$100.00 from one future rent payment.

Conclusion

The Landlord is ordered to follow up with the Tenants, as noted above, in order to help protect both Tenants' rights under section 28 of the Act.

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: December 12, 2022

Residential Tenancy Branch