



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing originally convened on August 25, 2022 and was adjourned in an Interim Decision dated August 26, 2022 due to time constraints. This decision should be read in conjunction with the August 26, 2022 Interim Decision. This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant's case was heard in full during the first hearing on August 25, 2022. At the beginning of the second hearing, on January 12, 2023, counsel confirmed with the advocate that the advocate had finished his direct examination and submissions on behalf of the tenant. The advocate confirmed that he had no further submissions other than those made in response to counsel's submissions.

The tenant and an agent for the landlord (the "agent") attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. At both hearings the tenant was represented by an advocate and the landlord was represented by counsel.

Preliminary Issue- Request to Exclude Landlord's Agent

At the first hearing the landlord's agent and counsel for the landlord attended. No requests to exclude the landlord's agent from the hearing were made. In the second hearing the advocate submitted that he wished to call the agent as a witness and after the agent was called, the advocate requested that the agent be excluded from the remainder of the hearing.

Counsel submitted that the landlord is entitled to be represented at this hearing by both an agent and counsel and that the agent is the landlord's primary witness. Counsel objected to the exclusion of the agent but did not object to the advocate cross-examining the agent.

Rule 7.20 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

7.20 Exclusion of witnesses and others

The arbitrator may exclude witnesses from the dispute resolution hearing until called to give evidence. The arbitrator may, when they consider it appropriate to do so, exclude any other person from the dispute resolution hearing.

The wording of Rule 7.20 is permissive, I am not obligated to exclude any person from the dispute resolution hearing. In the hearing I informed both parties that I would not exclude the agent from the proceedings as I concurred with counsel that the landlord had the right to be represented by an agent and counsel. As the main witness for the landlord, I found that it was appropriate for counsel to conduct a direct examination of the agent and for the advocate to cross examine the agent.

Issues

1. Is the tenant entitled to an Order for the landlord to comply with the tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement between the landlord and the

tenant states the address of the subject rental property but does not have a descriptor of upper or lower.

The agent testified that the landlord company's majority shareholder (the "shareholder" owns the landlord company. The agent testified that when the house was purchased by the landlord in 2019 she was acting for the landlord to facilitate building a new barn and was basically a caretaker of the house, surrounding land and the horses on the land. The agent testified that a horse rescue charity that she runs leases the land surrounding the property from the landlord. The agent testified that the subject rental property has been managed by property management companies since April 2022.

The tenant testified that in 2019 she advertised herself as a prospective tenant with a dog grooming business, looking for a suitable rental to accommodate her living accommodation and home-based business. The tenant testified that she was contacted by the agent to rent the subject rental property.

The tenant testified that the agent told her that the main suite of the subject rental property would be for her use and that the lower studio suite would be used by the shareholder as a coffee room when he was looking after the horses.

The tenant testified that the agent told her that she was responsible for the electricity payments for the entire subject rental property and that the shareholder would pay her \$50.00 per month for his use of electricity in the lower suite. The tenant testified that the agent told her that the landlord would never sleep in the lower suite.

The tenant testified that there is a door between the upper and lower suites but that when she moved in it was not locked and she came into the lower suite "a couple of times". The tenant testified that the landlord did not use the lower suite very often. The tenant testified that she believed that she had rented the entire house, including both the upper and lower suites.

The tenant testified that the issue with what was included in the rent first came up when the agent told her that the agent's friend (the "lower tenant") was moving into the lower suite to help with the horses while the agent was recovering from hip replacement surgery. The tenant testified that she assumed the move was going to be temporary because the landlord did not ask her to sign a new tenancy agreement.

The tenant testified that the agent's role at this time was that of a property manager

acting on behalf of the landlord. The tenant testified that she didn't think it was totally legal for someone to move into the lower suite but she didn't want to make a mess of the relationship and so did not object to the lower tenant moving in. The tenant testified that she was frightened to make waves.

The tenant testified that the lower tenant is an employee of the charity run by the agent adjacent to the subject rental property and feeds the horses and picks up manure. The tenant testified that she allowed the lower tenancy to continue and became friendly with the lower tenant.

The tenant testified that on May 19, 2021 she filed a dispute with the Residential Tenancy Branch against the landlord to get clarity on "things". The tenant testified that she withdrew the application for dispute resolution because the agent told that if she didn't withdraw it the landlord would sell the property. The tenant testified that she then withdrew her application for dispute resolution.

The tenant testified that after she withdrew the application she thought there would be improved communication, but this did not occur so she filed a second application with the Residential Tenancy Branch, which she again withdrew.

The landlord entered into evidence an audio recording made between the agent and the tenant. The tenant testified that the audio recording is only of a portion of the conversation. The audio recording is transcribed below:

Agent: You got all your taps closed? Everything?

Tenant: [crying] I, I use this plug to plug into my business everyday.

Agent: Ok, well you didn't tell me that.

Tenant: Well I thought you knew. You knew I could've told you.

Agent: This is [the shareholder's] domain here. Absolutely this is all [the shareholder's stuff.

Tenant: [crying] I, I didn't know, this wasn't told to me. This is just a communication problem [agent].

Agent: [Tenant], you rent the main floor of the house and we gave you the laundry room that was meant for the downstairs suite so that you could operate your business. Is that correct?

Tenant: Yes, it is, yeah but please.

Agent: Do we pay for a gardener to take care of this house? We asked you to do no yard work, correct? Is it true we pay for everything?

Tenant: [sneeze?] I did it on my, I did my own household.

Agent: You did it when you wanted to.

Tenant: No, I didn't, I did it when you told me he was injured.

Agent: Well, fair enough but the deal was we took care of all the yard work, and you rented the main floor. Don't walk away please.

Tenant: I'm not walking away.

Agent: Ok. So, I was over here for 6 hours yesterday trying to get this done.

Tenant: [crying] you didn't knock on my door.

Agent: I....

The tenant testified that at 6:30 a.m., before the above conversation took place, she heard the pipes at the subject rental property running and she was worried that the pump would burn out. The tenant testified that she was afraid to contact the agent so early in the morning, so she contacted the lower tenant. The tenant testified that she then went to the pumphouse and turned the water off.

The tenant testified that she later went to the pumphouse which controlled the water and found that the agent had put a lock on it. The tenant testified that she needed access to the pump house for her business. The tenant testified that in the above transcribed conversation the agent was upset with her for mowing the lawn while the gardener was injured.

The tenant testified that she felt bullied during the above transcribed conversation which

is why she was crying. The tenant testified that she did not admit in the above transcribed conversation that she only rented the main suite. The tenant testified that when she rented the subject rental property it was only brought up that she could use the laundry room for her dog grooming business, not that she was only renting the main suite.

The agent testified that that the subject rental house is comprised of a main suite, rented to the tenant, and a lower suite, for the exclusive use of the shareholder.

The agent testified that at no point was the lower suite ever rented to the tenant or included in the tenancy agreement. The agent testified that the tenant was not authorized to enter the lower suite and was given permission on only one occasion to leave a rent cheque inside the lower suite. The agent testified that the tenant was never authorized to store any belongings in the lower suite.

The agent testified that when the tenant moved in and before the lower tenant moved in the shareholder had exclusive possession of the lower suite. The lower suite held the shareholder's personal items and items for cooking.

The agent testified that the prefix main was not put on the tenancy agreement because the tenant was verbally told that the lower suite was not hers and that this was understood.

The agent testified that the shareholder used the lower suite during the tenant's tenancy but that this usage decreased over time due to the declining health of the shareholder. The agent testified that the lower suite was not the main residence of the shareholder. The agent testified that the shareholder decided to rent the lower suite to the lower tenant because she needed help with the horses, the shareholder's health was declining and for financial reasons. The lower tenant provided the assistance needed with the horses.

The agent testified that the lower tenant occupied the lower suite for just over two years and that the tenancy ended because of the tenant's conduct. The agent testified that the tenant verbally abused the lower tenant, played loud music and slammed doors at all hours of the night. The agent testified that the tenant would start her vehicle in the carport, which shares a wall with the lower tenant's bedroom and would intentionally rev the engine.

The agent testified that she recorded the conversation transcribed above because of the tenant's aggression expressed earlier in the day on February 14, 2021. The agent testified that the tenant texted the lower tenant that the pipes were frozen. The agent testified that the lower tenant contacted her and she came over to investigate. The agent testified that the pipes were not frozen but there had been a build up of sediment. The agent testified that to fix the problem, she just needed to plug and unplug the pump to clear the sediment.

The agent testified that unbeknownst to her, instead of plugging in and unplugging the pump, the tenant had opened up all of the faucets in the main suite which depressurized the system. The agent testified that had the pipes been frozen this would have been the right thing to do, but not in this case. The agent testified that because the faucets were all open, the system would not repressurize which prevented the water from flowing. The agent testified that she was at the subject rental property for hours trying to get it to work, but because the tenant opened up all the taps she could not get the water back on.

The agent testified that after several hours she left without resolving the issue and the tenant became extremely aggressive telling the agent to get back over there to figure out the problem. The agent testified that the police were called because the tenant was so aggressive. After the above incident, the agent testified that she felt the need to record the telephone conversation between herself and the tenant.

The agent testified that in the conversation the tenant confirmed that she rented only the main floor and laundry room and not the lower suite. The agent testified that she told the tenant that the pump room is not hers and that the doors were to be locked.

The agent testified that the only portion of the property that the tenant has exclusive possession of is the main suite and the two carport parking spaces.

The advocate submitted that a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") served on the tenant on January 2, 2021 did not include the prefix "main" in the address. The aforementioned 10 Day Notice was entered into evidence.

The advocate asked the agent questions pertaining to the charity's status as a charity and its charitable donations. I found these questions to be irrelevant to the understanding of the parties on the terms of the tenancy agreement when it was entered into. I decline to reproduce them in this decision.

Counsel submitted that the tenant's claim that her tenancy agreement covered both the main and the lower suites is false as shown by the evidence. Counsel submitted that the tenant explicitly acknowledged in the past that her tenancy only covered the main suite and the laundry room, not the lower suite. Counsel pointed to the February 14, 2021 telephone conversation transcribed earlier in this decision, an email from the tenant to the agent dated March 23, 2021, and a text message exchange between the tenant and the agent dated April 16, 2020 to April 19, 2020.

The March 23, 2021 email states:

Further to my last E-mail...

In the beginning of my tenancy in September of 2019, we all got along and everything was fine, and comfortable.

However, things seemed to change as soon as you illegally moved your best friend, [the lower tenant] in, in April 2020.

You became extremely abusive and began to interfere in my life, giving all sorts of illegal restrictions and rules, even to the point of rudely reprimanding one of my clients who came up the driveway a little too fast because he was late for his appointment.

Know that I do not want to follow through with my legal rights, though after your attacks became so severe against my business, and attacking my survival, I certainly have every right.

I only want to live in peace. You had no right to move Sue in, as I had rented this entire house, with the conditions that the owner had the little suite downstairs for his use. After you telling me you needed help with the horses, I felt it necessary to allow this, but not with the allowance of all the unjustifiable abusive that you have displayed towards me.

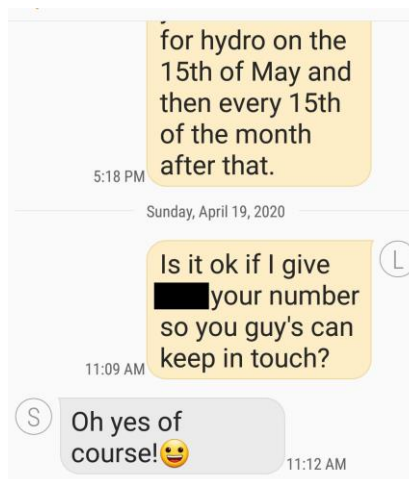
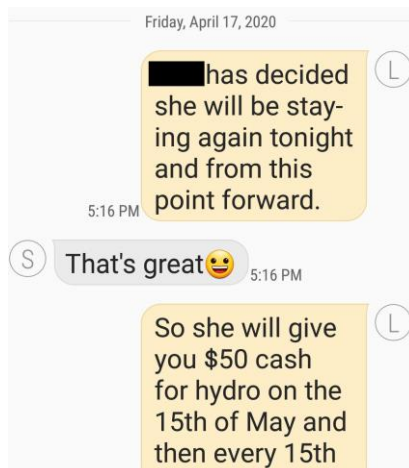
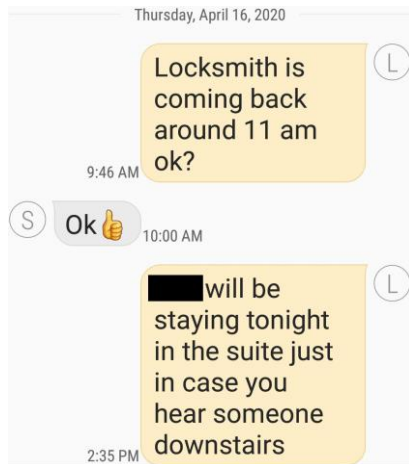
I ask for us to merely get along with mutual respect.

Counsel highlighted the following portion of the above email:

You had no right to move [the lower tenant] in, as I had rented this entire house, with the conditions that the owner had the little suite downstairs for his use.

Counsel submitted that as seen in the above text and the audio recording, the tenant acknowledged that she never had access to or use of the lower suite.

The April 16-19, 2020 text messages state:



The lower tenant's name was redacted in the above text messages for privacy. Counsel submitted that in the above text message exchange the tenant took no issue with the lower tenant moving into the lower suite. Counsel submitted that the lower tenant's tenancy lasted for nearly two years.

Counsel submitted that in order for the downstairs unit to be part of the tenancy agreement, the tenant would have to have had exclusive possession of the lower suite, which it is clear she did not. Counsel submitted that exclusive possession is the hallmark of a tenancy agreement as set out in Residential Tenancy Policy Guideline #9.

Counsel submitted that the tenant testified that she was afraid to make complaints to the landlord and that is why she did not dispute the lower tenant moving in. Counsel submitted that emails from the tenant to the agent clearly show that the tenant was not afraid to complain and did so complain to the agent. The landlord referred to the March 23, 2021 email reproduced above and additional text messages entered into evidence.

The landlord entered into evidence text messages from the tenant to the agent regarding a variety of issues with the following dates:

- May 30, 2020,
- December 19, 2020, and
- August 5, 2021.

Counsel submitted that the tenant's application for dispute resolution uses the prefix "main" in the address of the subject rental property, which again shows that the tenant was aware that she only rented the main suite.

Counsel submitted that the tenant does not have any documentary evidence to support her version of events.

Analysis

Residential Tenancy Policy Guideline #9 states:

Tenancy agreement is defined in the Residential Tenancy Act (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

....

Under a tenancy agreement, the tenant has exclusive possession of the site or

rental unit for a term, which may be on a monthly or other periodic basis

The tenant testified that when she entered the tenancy agreement with the landlord, the lower suite would be used by the shareholder as a coffee room. I find that the tenant therefore clearly did not have exclusive possession of the lower suite as the tenant admitted that the lower suite was not for her exclusive use.

Later in the hearing the tenant testified that she believed that she had rented the entire house, including both the upper and lower suites. I find that the above testimony of the tenant is inconsistent with her earlier testimony that the lower suite was to be used as a coffee room for the shareholder. I find it illogical that the tenant could believe that the lower suite was included in the tenancy agreement when she acknowledged that it was to be used by the shareholder. I find that the tenant's testimony that she believed the lower suite was part of the tenancy is not believable or credible.

The tenant testified that she did not agree in the audio recording that she only rented the main suite and the laundry room. I find that the plain reading of the following portion of the transcript shows that the tenant agreed that she only rented the main suite and laundry room:

Agent: [Tenant], you rent the main floor of the house and we gave you the laundry room that was meant for the downstairs suite so that you could operate your business. Is that correct?

Tenant: Yes, it is, yeah but please.

In the above section of the transcript the agent clearly distinguishes between the upper and the lower units and that the tenant was granted the laundry room that would otherwise belong to the lower unit. Had the entire house been rented to the tenant, then there would be no reason to distinguish the main suite from the lower suite. I find that the transcript supports the landlord's version of events.

The tenant testified that she felt bullied in the transcribed conversation. While it is evident that the tenant is upset in the audio recording, I do not find the conduct of the agent in the audio recording to be bullying in nature. I find that the statements made in the audio recording were not made under duress. Duress involves coercion of the consent or free will of the party. I find that the landlord was not unfair in the audio recording and did not act in an excessive or coercive manner.

I find that in the March 23, 2021 email the tenant again acknowledged that the shareholder had the lower suite for his use. Clearly, the lower suite was not included in the tenancy agreement given that the lower suite was for the use of the shareholder. While the tenant objected to the lower tenant living in the lower unit in the March 23, 2021 email, I find that the tenant was obviously aware that the lower unit was not a part of the tenancy agreement as she stated that “the owner had the little suite downstairs for his use”. I find that “the owner” is a reference to the shareholder who owns the landlord company.

I find that had the tenant believed that the lower unit was part of her tenancy, then the tenant would have indicated as much to the agent when the agent informed the tenant of the lower tenant moving into the lower suite. As seen in the text messages entered into evidence, no such complaint was made. I do not accept the tenant’s testimony that she did not complain because she was afraid to make waves. I find that the landlord has proved through texts and emails entered into evidence that the tenant made complaints and requests of the agent throughout the tenancy.

I find that while the tenant has filed and withdrawn previous applications for dispute resolution against the landlord, this does not change the findings of facts I have made in this Decision. The existence of the previous withdrawn applications does not change the understanding of the parties at the time the tenancy was entered into, that being that the shareholder has use and occupation of the lower suite and that the tenant rented only the main suite and the laundry room.

I find that both parties have submitted documents in which the address of the subject rental property is described differently, some with a “main” prefix and some with no prefix whatsoever. I find that a more specific tenancy agreement would have provided greater clarity on the terms agreed upon by both parties; however, as I have stated above, I find that the clear intent of the parties was for the tenant to rent the main suite and the laundry room, not the lower suite. I find the failure of the landlord to draft a better tenancy agreement is regrettable but does not change the understanding of the terms agreed upon by the parties when the tenancy agreement was formed.

Based on the testimony of the tenant and the agent, the submissions of the advocate and counsel and all of the documents entered into evidence, I find, on a balance of probabilities, that the lower suite was not included in the tenancy agreement.

Pursuant to my above findings I dismiss the tenant's application for dispute resolution 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: January 18, 2023

Residential Tenancy Branch