



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on November 20, 2022. The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord comply with the Act, Residential Tenancy Regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalf. The Landlords attended the hearing and were represented at the hearing by KK, legal counsel. The Tenants and the Landlords provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, MG testified that the Notice of Dispute Resolution Proceeding package was served on the Landlords in person November 30, 2022. In addition, MG testified that an additional documentary evidence package was served on the Landlords in person on February 23, 2023. KK confirmed receipt of these documents on behalf of the Landlords.

On behalf of the Landlords, KK stated that documentary evidence in response to the Tenants' application was served in person on March 10, 2023. MC acknowledged receipt of these documents on behalf of the Tenants.

No issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the Act, the Regulation, and/or the tenancy agreement?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on October 1, 2020. The Landlords subsequently purchased the rental property and took possession on February 1, 2022. The tenancy continues on a month-to-month basis. Currently, rent of \$1,397.50 per month is due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$795.00 and a pet damage deposit of \$250.00, which the Landlords hold.

The Tenants seeks an order that the Landlords comply with section 28 of the Act, which protects a tenant's right to quiet enjoyment.

MG testified there has been "frequent and ongoing" interference since they purchased the property. First, MG testified that the following notices to end tenancy have been issued since the tenancy began:

- Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 1, 2021;
- Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 28, 2022; and
- One Month Notice to End Tenancy for Cause, dated October 14, 2022.

The Tenant testified that each of the above notices to end tenancy were disputed. The Two Month Notices to End Tenancy for Landlord's Use of Property were cancelled as the arbitrator in each instance found they were not issued in good faith. The One Month Notice to End Tenancy for Cause was cancelled because the arbitrator found that the Landlords had failed to meet the burden of proving the tenancy should end to comply with a government order. MG submitted that the notices did not comply with the Act because each was cancelled. The file numbers of the related proceedings have been included above for ease of reference.

In addition, MG testified that the Tenants made multiple efforts to obtain the Landlords' contact information for the payment of rent. In a letter dated January 5, 2022, the Tenants stated they wanted "all services and material terms to be in place no later than January 31, 2022 to ensure no disruption to us and our current legal tenancy agreement." The letter included the Tenants' email addresses for communication. MG testified that the lack of communication about the payment of rent caused the Tenants stress and that they spoke to a lawyer about their rights.

In addition, MG testified it was disruptive to have to renegotiate rent when cable and internet services were terminated in January 2022. The parties subsequently reached an agreement with respect to a rent reduction to offset the services no longer being provided.

Further, MC testified there were improper entries to the rental unit. MC testified that on December 29, 2022, the Landlord came to her door to advise that a contractor would attend the next day to address the repair of caulking and paint in the bathroom. The Landlord did not enter the rental unit on that date. Further, MG testified that on January 29, 2023, SS came to the door to advise that the Landlords wished to bring an inspector to the rental property. MG testified that she denied entry at that time.

In reply to the above, KK submitted that the examples provided by the Tenants do not meet the threshold required to find a breach of the Tenants' right to quiet enjoyment. Referring to Policy Guideline #6, KK noted that temporary discomfort or inconvenience does not form a basis for a breach of the Tenants' right to quiet enjoyment. KK also noted that even when the interference is frequent and ongoing, these instances may form the basis of a claim.

With respect to the Tenants' evidence of improper entries, KK noted that the Landlords were merely trying to talk to the Tenants about entry when contractors changed dates, which is permissible under the Act. KK also noted that the Landlords did not enter the rental unit on either of the occasions referred to by MG. KK confirmed the Landlords are prepared to provide written notice for future entries.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 62(3) of the Act confirms that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that the Act applies.

Specifically, the Tenants requested an order that the Landlords comply with section 28 of the Act, which protects a tenant's right to quiet enjoyment of a rental unit, including rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit, and use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, I find that the evidence and submissions of the Tenants, taken as a whole, is insufficient to grant the relief sought.

While I find that issuing three notices to end tenancy in a 12-month period is more frequent than one would expect, I find that the instances described in the evidence resulted in temporary inconveniences to the Tenants, not frequent and ongoing disturbances. To find otherwise would have a chilling effect on a landlord's right to take steps to end a tenancy in accordance with the Act. However, I caution the Landlords to ensure that future notices to end tenancy issued to the Tenants, if any, fully comply with the relevant provisions of the Act.

Further, I find the Landlords' failure to respond immediately to the Tenants' requests for contact information for the payment of rent was not a breach of the Tenants' right to quiet enjoyment. I accept that the Landlords had not yet taken possession of the rental property on January 5, 2022, the date of the letter referred to by MG. For the same reason, I also find that the Tenants' concerns regarding the consequences for failing to pay rent when due were unreasonable and premature. If necessary, payment could have been made in a number of ways to ensure rent was paid to the Landlords when due in compliance with section 26 of the Act.

With respect to the renegotiation of rent after certain services were disrupted, I find this kind of negotiation is permitted under the Act and is not unusual. I find that this single instance does not contribute to a breach of the Tenants' right to quiet enjoyment.

Finally, I find the Landlords' attendance at the Tenants' door on two occasions on December 29, 2022 and on January 29, 2023 were neither improper entries nor a breach of the Tenants' right to quiet enjoyment. Indeed, I find that the Landlords did not enter the rental unit on either occasion. For the benefit of the parties, as indicated in section 29 of the Act, a landlord may enter a rental unit with the tenant's permission. Written notice of entry is not a requirement when a tenant consents to the entry. To that end, a landlord is entitled to ask for permission to enter a rental property without giving written notice, and a tenant may deny that request and require written notice. I note the Landlords' stated willingness to issue written notices of entry going forward.

Considering the above, I find that the Tenants' application is dismissed without leave to reapply.

Conclusion

The Tenants' application is 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 Residential Tenancy Act.

Dated: March 17, 2023

Residential Tenancy Branch