



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The applicants filed on March 14, 2023 for:

- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch (RTB) Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Are the applicants entitled to an order for the landlord to comply with the Act, Regulation, or tenancy agreement?
- 2) Are the applicants entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Those present agreed on the following particulars of the tenancy. It began November 1, 2016; rent is \$2,055.00, due on the first of the month; and the applicants paid a security deposit of \$950.00, which the landlord still holds.

A copy of the 2016 tenancy agreement is submitted as evidence.

The parties disagreed as to whether the applicants had paid a pet damage deposit of \$950.00. A previous RTB decision, noted on the cover page of this decision, states “the landlords also collected a pet damage deposit in the amount of \$987.50 on February 1, 2020 when the tenants obtained a pet. Both deposits are still held in trust by the landlords.”

The applicants testified they seek for the landlord to stop harassing them with constant email requests to change things that have been in place for six and a half years. The applicants submitted that the relationship soured after the landlord sought for the applicants to pay more rent, served them with a Two Month Notice for Landlord’s Use of Property, then were unsuccessful when the applicants disputed the Notice.

The applicants submitted that the landlord is disturbing their right to quiet enjoyment with frequent demands that the applicants make changes, and have only recently begun conducting inspections. The applicants submitted they believe the landlord is attempting to drive the applicants from the property so the landlord can charge a market rate. The applicants testified that as the landlord comes to the property to collect the rent in cash each month, the landlord has been aware of how the applicants are using the property, and had not previously raised the numerous recent concerns.

The applicants testified that on December 23, 2022 the landlord told the applicants that the tenancy agreement permits one vehicle to be parked on the property, and that as the applicants have a large truck, another truck, and a boat parked on the property, along with another vehicle parked on the street, there is no room for the downstairs tenant to park and enter her unit. The applicants testified that for six and a half years prior, the landlord had not had an issue with the number of vehicles the applicants parked in the driveway or on the street.

The applicants submitted that after obtaining the landlord’s permission to build a bylaw-compliant parking pad on the property, applicant KW’s father built the pad for a recreational vehicle (RV). A letter from the applicant’s father is submitted as evidence, and supports the applicant’s testimony. The letter states that applicant KW asked the landlord for permission, and that “he said that was not a problem.” The letter states that

the applicant's father parked the RV there for four years. Submitted as evidence is a letter from the applicants' next-door neighbours, stating that the applicants have been their neighbours for about six years, and that during that time there has always been either a boat or an RV on the property, along with several vehicles belonging to the applicants and the downstairs tenant.

The applicants testified that recently the landlord has instructed the applicants that the carport on the property is for a car, is not for storage, and that the applicants are not permitted to store tools there. The applicant submitted the landlord made this request after six and a half years, and only recently have stated the carport is to be used only for the applicants' vehicle and garbage bins.

The applicants testified that on December 23, 2022 the landlord stated that the applicants must move the extra vehicles and the items stored in the carport by the next morning. Submitted as evidence is the landlord's email, sent on December 23, 2022 at 3:56 PM. The email supports the applicants' testimony.

The applicants testified that 10 days after the landlord lost their RTB dispute, they approached the applicants with a new tenancy agreement that was for a six-month fixed term. The applicants testified this was exactly what they had fought against when they disputed the Two Month Notice.

The applicants provided testimony on additional examples of changes the landlord has requested only recently.

The landlord provided very limited testimony, submitting that they have made requests of the applicants due to health and safety concerns, that applicant SG is not named on the tenancy agreement, and that they request the removal of unauthorized pets, and the removal of a shed that was affecting the sewer system and irrigation. The landlord submitted that the tenancy agreement states that rent includes parking for one vehicle, and that they request the additional vehicles be removed, for items in the attic to be removed due to fire hazard, and for SG to be removed from the unit as he is an unauthorized occupant.

Analysis

Section 28 of the Act [*Protection of tenant's right to quiet enjoyment*] states that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance.

Residential Tenancy [Policy Guideline 6 Entitlement to Quiet Enjoyment](#) states: "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. ... 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."

Section 62(3) of the Act [*Director's authority respecting dispute resolution proceedings*] allows an arbitrator to make any order necessary to give effect to the rights, obligations, and prohibitions under the Act, including an order that a landlord or tenant comply with the Act, the Regulation, or a tenancy agreement.

The applicants have provided affirmed testimony that after many years of an amicable tenancy the landlord sought additional rent, then served the applicants with a Two Month Notice, which the applicants successfully disputed. The applicants testified that their relationship with the landlord has soured, and that the landlord is now demanding the applicants change numerous things regarding the tenancy that have been in place for many years. The applicants testified that as the landlord collects rent in person each month, the landlord has been aware of how the applicants have been using the property, and the landlord is only now pushing the applicants to make many changes in an effort to exasperate them so they will move out, permitting the landlord to charge much more rent.

The applicants have provided numerous examples of the landlord's alleged behaviour, including submitting that though the applicants have parked numerous vehicles on or around the property for many years, on December 23, 2022 the landlord gave the applicants less than 24 hours to remove all but one of the vehicles, as well as make other changes to the property. The applicants submitted as evidence a letter from applicant KW's father and a letter from their next-door neighbours, both letters supporting the applicants' testimony that the vehicles had been on the property for many years.

The landlord provided little in the way of a response to the applicants' extensive testimony, rather citing changes they seek from the applicants, including the removal from the property of applicant SG, whom the landlord stated is an unauthorized occupant.

Based on the applicants' affirmed testimony and documentary evidence, and considering section 28 of the Act, I find it is more likely than not that the applicants have proven that their right to quiet enjoyment is being breached by the landlord.

Pursuant to section 62(3) of the Act, I order the landlord to take all reasonable measures to comply with the Act, the Regulation, and the tenancy agreement, including section 28 of the Act.

If the breach of the applicants' quiet enjoyment persists, they are at liberty to apply for future relief under the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the applicants are successful in their application, I order the landlord to pay the \$100.00 filing fee the applicants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the applicants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The applicants' claim is granted. I order the landlord to take all reasonable measures to comply with the Act, the Regulation, and the tenancy agreement.

The applicants may withhold \$100.00 from a future rent payment on ONE occasion in full satisfaction for a return of the filing fee.

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: May 08, 2023

Residential Tenancy Branch