Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- an order for the Landlord to complete repairs to the rental unit or common areas;
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- recovery of their filing fees.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledged receipt of both Proceeding Packages and raised no service concerns. I therefore found them duly served with the proceeding Packages for the purposes of the Act and the hearing of the Tenant's applications proceeded as scheduled.

Service of Evidence

The parties acknowledged receipt of the documentary evidence before me from each other. Although the Landlord argued that they were unaware that the Tenant intended to rely on an email from June 22, 2024, at the hearing, they acknowledged its receipt and I found it to be new and relevant evidence in accordance with rule 3.17 of the Residential Tenancy Branch Rules of Procedure (Rules). I therefore accepted it for consideration. Although the Landlord failed to serve the Tenant with several documents before me, such as a previous decision dated June 5, 2024, and an email chain between June 19, 2024 – June 25, 2024, the Landlord argued this was in response to the late evidence served on them by the Tenant (the June 22, 2024, email).

As I allowed the Tenant's late evidence under rule 3.17 of the Rules, and as the Tenant stated that they have no objections to the acceptance of the Landlord's unserved evidence above as they already had copies, I therefore accepted them for consideration.

Issues to be Decided

Is the Tenant entitled to an order for the Landlord to complete repairs to the rental unit or common areas?

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

Is the Tenant entitled to recovery of their filing fees?

Background and Evidence

I have reviewed all evidence, including testimony, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on October 1, 2020, with a monthly rent of $1,500.00, due on the first day of the month, with a security deposit in the amount of $750.00 and a pet damage deposit in the amount of $750.00.

The Tenant stated that the Landlord has not repaired and maintained the property in accordance with section 32(1) of the Act, and sought the following:

- repairs to a ground water pump;
- installation of a railing on a retaining wall; and
- painting of the rental unit.

The Tenant stated that after a flood in April of 2023, they were told by firefighters that a ground water pump on the property needs to be fixed, and that pipes in the home make noise so they are worried about another flood. The Tenant stated that the retaining wall where they park their vehicle is dangerous as it has no railing, and they have tripped and almost fell over it. As a result, they sought an order that the Landlord install a railing for their safety. They also sought an order that the Landlord paint the rental unit as they have lived there for almost four years and it has not been painted by the Landlord during that time.

The Landlord denied responsibility for completing the above noted maintenance and repairs. The Landlord denied the existence of a ground water pump on the property or being advised by the fire department in 2023 that one existed on the property and required repairs. In support of this they pointed to documentation before me from a plumber stating that there is no ground water pump on the property and therefore nothing to repair. The Landlord stated that the tenancy agreement does not provide for parking at the property by the Tenant, and denied ever granting the Tenant permission to park in the back of the property near the retaining wall. The Landlord stated that the

city has also not required them to install any type of railing in that area. With regards to painting, the Landlord denied that the rental unit requires painting at this time and argued that when it does, asbestos will need to be remediated first.

The Tenant also sought an order for the Landlord to comply with the Act, regulations, or tenancy agreement. Specifically, the Tenant sought an order that the Landlord cease serving them warning letters about property maintenance and remove cameras on the property as they significantly interfere with their right to quiet enjoyment.

The Landlord argued that as the Tenant is required under their tenancy agreement to maintain the lawn and landscaping, and they have been receiving letters from the city regarding the lack of lawn maintenance, their requests to the Tenant that they maintain the lawn are not only reasonable but in line with he Tenant's obligations under their tenancy agreement. As a result, they stated that they do not constitute a breach of the Tenant's right to quiet enjoyment. In terms of the cameras the Tenant requested be removed, they denied that any of them face areas rented to the Tenant for their exclusive use and possession. As a result, they argued that the Tenant does not have a reasonable expectation of complete privacy there. They also argued that the cameras are for protection of the entire property, including the Tenant's rental unit, the other currently vacant unit on the property, and the shared common areas of the property.

The Tenant denied that there are any common areas where the cameras face and alleged that a doorbell camera mounted beside the door of the other rental unit faces into their unit. The Landlord denied this stating that it faces straight ahead on the shared walkway.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party bearing the burden of proof must provide sufficient evidence over and above their testimony and submissions to establish their claim. In this case, the Tenant bears the burden of proof in relation to their own claims.

Is the Tenant entitled to an order for the Landlord to complete repairs to the rental unit or common areas?

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenant submitted no documentary or other corroboratory evidence to support their testimony that a ground water pump exists at the property that requires repairs. In contrast, the Landlord submitted a plumbing invoice dated June 18, 2024, wherein the plumber stated that the property does not have a ground water pump and there is also

no evidence of the previous existence of one. Further to this, the plumber stated that having inspected the property, they confirm a ground water pump is not required.

Based on the above, I am satisfied that no ground water pump exists on the property and that no ground water pump is necessary. As a result, I dismiss the Tenant's claim for repairs to a ground water pump without leave to reapply.

With regards to the Tenant's request that a railing be installed on a retaining wall, no documentary evidence was submitted that the installation of such a railing is required to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. As a result, I am not satisfied by the Tenant that it is. Further to this, I am not satisfied that the Tenant is permitted to park their vehicle by the retaining wall under the tenancy agreement, as the tenancy agreement does not state that parking is included or that the Tenant may park there or anywhere else on the property. As a result, I find that they may not. Contrary to the Tenant's expressed belief at the hearing that landlords are required to provide on-property parking, no such requirement exists under the Act or regulations. As a result, I am also not satisfied that the installation of a railing on the retaining wall is necessary to render the rental unit suitable for occupation by a tenant.

As a result of the above, I therefore dismiss the Tenant's claim for installation of a railing without leave to reapply. Finally, while I acknowledged that Residential Tenancy Policy Guideline (Policy Guideline) 41 lists the useful life on interior paint as 4 years, the guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and claims for damages. It is not a list of when landlords MUST repair or replace items.

No evidence, other than the Tenant's affirmed testimony that the paint was showing wear and tear, was submitted. Further to this, the Landlord denied that the rental unit needed to be painted. As a result, I find that the Tenant has failed to satisfy me that painting is required to either comply with the health, safety and housing standards required by law, or make it suitable for occupation by a tenant. As a result, I also dismiss their claim for an order that the Landlord paint the rental unit without leave to reapply.

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

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited 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 in accordance with section 29 *[landlord's right to enter rental unit restricted]*; and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Although the Tenant argued that the security cameras and a doorbell camera on the property breached their rights under section 28 of the Act, I do not agree. All the cameras are on the exterior of the property and none appear to me to face interior spaces of the home. While the Tenant argued that they face exterior spaces rented to them for their exclusive use and possession, the Landlord argued that all exterior portions of the home are common spaces shared by the occupants of both units on the property. Further to this, the tenancy agreement makes no mention of any exterior space rented to the Tenant for their exclusive use and possession. Finally, although the Tenant argued that a doorbell camera mounted near the front door of the other rental unit sees into their rental unit, no evidence to substantiate this was submitted and from its positioning, it appears to face straight ahead to the shared walkway in front of the door(s).

Based on the above, I find that the Tenant has failed to satisfy me that the cameras interfere significantly or unreasonably with their right to quiet enjoyment of the property, which I am satisfied has shared common outdoor space. They have also failed to satisfy me that they look into any area rented to the Tenant for their exclusive use. As a result, I dismiss their claim for the Landlord to remove them without leave to reapply.

In terms of property maintenance, whether the Tenant had an agreement with the previous occupants of the other rental unit on the property regarding the division of property maintenance, and the terms of any such agreement, has no bearing on the Tenant's obligations to the Landlord under their own tenancy agreement. Terms 1 and 9 of the addendum to the tenancy agreement, which is signed by both parties, clearly states that the Tenant is responsible for keeping the exterior of the rental home clean, and for maintaining the lawn, maintaining the landscaping, and removing snow from the driveway and walkway(s). Further to this, the Landlord submitted a bylaw infraction letter dated May 21, 2024, regarding an inspection on May 17, 2024, and three warning letters to the tenant about their lack of lawn maintenance on May 24, 2024, April 30, 2024, and April 20, 2024.

As a result of the above, I am satisfied that the Tenant is obligated to keep the exterior of the rental home clean, maintain the lawn, maintain the landscaping, and remove snow from the driveway and walkway(s) under their tenancy agreement. This is also consistent with Policy Guideline 1, regardless of whether or not the previous occupants of the other rental unit routinely took over these duties while they lived there.

As a result, I find that the efforts made by the Landlord to have the Tenant comply with these obligations does not constitute either a breach of the Act or tenancy agreement, or a breach of the Tenant's right to quiet enjoyment under section 28 of the Act. The Landlord remains entitled to contact the Tenant, when necessary, about these

obligations including, but not limited to, issuing the Tenant warning letters if they fail to comply with them. As a result, I dismiss the Tenant's claim for an order that the Landlord be prohibited from issuing them warning letters about the lawn without leave to reapply. Pursuant to sections 62(2) and 62(3) of the Act, I also order that the Tenant immediately and continually comply with terms 1 and 9 of the addendum to the tenancy agreement.

Is the Tenant entitled to recover the filing fees for this application from the Landlord?

As the Tenant was not successful in their applications, I dismiss their claim for recovery of their filing fees under section 72(1) of the Act without leave to reapply.

Conclusion

The Tenant's applications are dismissed in their entirety without leave to reapply.

Pursuant to sections 62(2) and 62(3) of the Act, I order the Tenant to comply with terms 1 and 9 of the addendum to the tenancy agreement by mowing the lawn, maintaining the landscaping, and shoveling snow off the driveway and walkways. The Tenant is also cautioned that failure to do so could result in the filing of a complaint with the compliance and enforcement unit and administrative penalties. Information on the compliance and enforcement unit (CEU), including what they do and how to file a complaint, can be found here: https://alpha.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement

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

Dated: July 30, 2024

Residential Tenancy Branch