



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord provide facilities agreed upon.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order having the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to require the landlord to provide facilities agreed upon; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on August 7, 2013 for a month to month tenancy beginning on August 15, 2013 for a monthly rent of \$900.00 due on the 31st of each month with a security deposit of \$450.00 paid.

The parties agree that they did signed a written tenancy agreement but that the landlord did not provide a copy of the tenancy agreement to the tenant until January 4, 2014 after the landlord had indicated to the tenant that she was seeking to remove one of the bedrooms from the tenancy.

The tenancy agreement stipulates that the rental unit that the address of the rental unit is "Basement 1 room only (bedroom) -" The landlord submits that the tenant had an opportunity to review the entire tenancy agreement before signing it and did not indicate any problems with the wording. The tenant submits that he does not recall the tenancy agreement specifying one room only when he signed it.

The landlord submits that she had verbally advised the tenant when he was viewing the rental unit that the unit was only \$900.00 because she was not renting it out as a 2 bedroom rental unit but rather as a 1 bedroom unit.

The landlord submitted some email exchanges between the parties, prior to signing the tenancy agreement. The following emails are relevant to this issue:

- Dated August 4, 2013 from the landlord to the tenant: "I have a two bedroom furnished above ground very bright suite available. The rent is 900 per month (one person) which includes utilities, wifi, shared laundry and parking.....";
- Dated August 6, 2013 from the landlord to the tenant: "...I did say it was ok to use the back bedroom, only as a sitting area or office as though you may have guests stay over, I don't wish anyone permanently in that back bedroom. My son's bedroom is above, so if no one is there that will keep the noise down when he is playing his playstation games which sometimes as you can understand they do. One of the reasons I was only renting it out to one person."

Analysis

While I accept that the tenancy agreement stipulates that the rental unit consisted of 1 bedroom only, I find the agreement to be unreliable because the landlord failed to provide the tenant with a copy of the tenancy agreement after she and the tenant began to dispute the use of the 2nd bedroom.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me there is substantial documentary evidence, provided by the landlord herself that confirms her intention was to rent the unit to a single tenant only. However, in each of the emails noted above I find the landlord clearly is advising the tenant that he will have access to and use of the 2nd bedroom.

Section 27 of the *Act* states a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or its provision is a material term of the tenancy agreement. The Section goes on to state that a landlord may terminate or restrict a service or facility by other than one noted above if the landlord gives the tenant 30 day's notice and reduces the rent by an amount equivalent to the reduction in value of the tenancy agreement.

Because the termination of a room in the rental unit would reduce the square footage of the rental unit and reduce the number of rooms that tenant has access to I find that the provision of the bedroom is essential to the tenant's use of the rental unit and therefore a material term of the tenancy and the landlord must not terminate it from the tenancy.

Conclusion

Based on the above, I grant the tenant's Application and order that the landlord must not terminate use of the 2nd bedroom in the rental unit.

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: February 24, 2014

Residential Tenancy Branch

