Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ProLine Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord make repair to the rental unit, to be allowed a rent reduction for repairs, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

At the outset of the hearing the landlord's agent indicated that they have never received any complaint from the tenants on the issue of the fireplace or the lower bedroom prior to them receiving the tenants' application. The tenants acknowledged they have not made any prior request for these repairs.

In this case, I find the tenants' application for repairs on the fireplace and the lower bedroom premature. I find the tenants are required to give the landlord prior written notice of any requested repairs, so the landlord has the opportunity to investigate and if necessary, make those repairs.

Issue(s) to be Decided

Should the landlord be ordered to make repairs?
Are the tenants entitled to a rent reduction for loss of use?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The parties agreed that they entered a one-year fixed term agreement which began on November 1, 2019 and will expire on October 31, 2020. Rent in the amount of $3,000.00 is payable on the first of each month. The tenants paid a security deposit of $1,500.00 and a pet damage deposit of $1,500.00.

At the hearing the landlord's agent stated that they would let the tenants out of their lease without any penalty, except for one month's proper notice to end the tenancy, if they are not happy. The parties agreed at the hearing that the tenancy will revert to a month-to-month tenancy effective this day.

The male tenant testified that on November 28, 2019 there was a bloom of mould in the covered deck area. The tenant stated that they washed the walls with bleach and that the mould issue was okay for two months. However, there was another bloom of mould in February 2020, which leaves the covered deck area unusable.

The male tenant testified that when they were cleaning the mould, they discovered that there was rot in the floor. The tenant stated that the landlord has stated they would repair the decking; however, they do not believe the landlord, or their workers have the ability to fix the problem as it cannot be fixed by simply replacing the subfloor and flooring. The tenant stated that they would like the building inspector to assess the situation and if necessary that portion of the covered decking removed as this would be better than having mould.

The tenants submit that they should be entitled to a rent reduction of $1,500.00 for each month the repair has not been made.

The male tenant testified that they want the landlord to comply with the Act and obtain a new gardener. The tenant stated that their wife feels the gardener is unfriendly threatening and looks at his wife with threatening glares. The tenant stated that the gardener has also blocked his wife's vehicle in the driveway creating a threatening environment, which she felt intimidated and was scared to ask him to move his vehicle.

The male tenant testified that they are also upset by the voice message the landlord left regarding the gardener being upset because of dog feces in the yard and getting feces on his clothing and equipment. The tenant stated the voice mail was insulting and offensive and is a breach of their rights to quiet enjoyment.

The tenant testified that they always do their best to pick up the animal feces the night before the gardener is expected to attend and they leave for work at 5:30 am. The tenant stated that his wife has health issue and cannot go outside to cleanup any feces. The tenant stated that they do comply with the Act to maintain a reasonable standard which the landlord should hire a gardener that is tolerant of dog feces When they allow pets.

The landlord's agent testified that the area of decking is covered and there are windows installed. The agent stated this area was never intended for living space as it is uninsulated, not heated and the tenants are using it for a purpose of which it was not intended. The landlord stated that they have always been willing to repair the decking and flooring; however, the tenant did not want them to do the repair and due to the state of emergency the repair has not been made.

The landlord's agent testified that they do not know if the covered area of the decking was permitted as this was this way the property was purchased by the owner. The agent stated they will consider having the building inspector in to assess the deck, which could result in that area being removed.

The landlord's agent testified that their gardener is a professional that they use his services on many sites and have had no other complaints. The agent stated that gardener has never even spoken with the female tenant and any fear is simply not justified. The agent stated that the gardener had to park in the driveway as there were construction vehicle on the road. The agent stated that the female tenant could have asked the gardener to move their vehicle, if they need to leave.

The landlord's agent testified that it is expected that the tenants remove all the dog feces from the yard before the gardener attends. The agent stated they left a voice message for the tenants to ensure the dog feces was removed.

The tenant acknowledged that they are fully aware that the cover deck, my have to be removed and returned to normal decking should the municipality become involved.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I find it not necessary to order the landlord to make repairs to the covered deck. The landlord has always been willing to make the repairs and due to the current state of emergency the repairs have not been made and to further complicate the matter the tenants are arguing how those repairs should be made. While I accept the tenants wanted the building inspector to attend to determine what the repairs are necessary, I find that is not the tenants' choice to make. I find if the landlord can make the repairs or if they want the building inspector to attend that is their choice to make not the tenants.

I also find it reasonable that should the portion of the deck that is covered be required to be remove or altered, by any government order. I find the tenants are not entitled to any future rent reduction as long an exterior deck remains in this area as this an exterior space and was the preferred choice of the tenants.

Further, I find the tenants request to reduce rent by 50% unreasonable, this is an exterior space and does not impact the interior of the rental unit, and any other issues with the rental unit have not been reported to the landlord. The landlord has the right to be notified that a problem exists and be allowed to investigate, and if necessary, make the repairs prior to a claim being made. Therefore, I dismiss this portion of the tenants' claim.

I also find the tenants request for the landlord to obtain a new gardener is unreasonable. While the female tenant may fear this person, it is based on a person not being friendly and the appearance of his face scowling or glaring, this is simply unfounded and judgemental. The female tenant has never spoken with the gardener and in any event, there is no reason for them to do so. The gardener is an employee of the landlord and are at the property simply to do a job which does not require any contact with the tenants.

Also, I find there is no evidence that the gardener purposely blocked the female tenant in the driveway with any malicious intent. The gardener was there to perform a job and it can be expected they would park in the driveway from time to time. I find the landlord is entitled to use any gardening service that they chose. I find the landlord has not violated the Act.

Further, I also find the voice mail of the landlord to be polite and courteous, simply because they used the work “dog shit” rather than “dog feces” does not change the context or intent of the message. At no time did the landlord yell, raise their voice or use any foul language towards the tenants. It was simply stating that the gardener was not happy and that they are expected to remove their pet feces, which they have a right to discuss such issue of the tenancy. I find the tenants response was an over reaction to the choice of the word used by the landlord, which is often used to describe dog feces. I do not find the landlord has violated the tenants right to quiet enjoyment. Therefore, I dismiss this portion of the tenants’ application

However, I do find it is the tenants responsible to ensure they remove all dog feces from the yard prior to the gardener attending this is not an unreasonable request as it is a privilege to be allowed a pet.

I find if the tenants allow their animal into that area after they have already cleaned it, they should be expected to remove any feces left behind as it only logical that their dog would urinate and defecate when they are allowed pet out in the morning or at other times during the day.

While I accept the tenant’s wife may not be able to walk their dog or pickup dog feces, due to their own health issues, they could always hire a dog walker on these days. I find It reasonable for the gardener to expect that the animal feces will be picked up prior to work performed.

While I accept the tenant’s make the effort to do so, dog feces could be a health or safety issue for the worker which the tenants have given no consideration.

Based on the above, the tenants’ application is dismissed. Since I have dismissed the tenants’ application, I decline to award the cost of the filing fee.

Conclusion

I find it not necessary to order the landlord make repairs at this time. I find the tenants request for a rent reduction at 50% unreasonable. The landlord has not violated the Act and can continue to use the gardener of there choice.

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: July 21, 2020

Residential Tenancy Branch