Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, LRE

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- repayment for the costs of emergency repairs; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenants and the landlord's legal counsel (counsel) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to provide their affirmed testimony and submissions and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The counsel raised the issue of jurisdiction. As such, the arguments and submissions on this issue were heard at the beginning of the hearing.

Additionally, the tenant submitted a significant amount of evidence shortly before the hearing. The tenant, NDS, said that staff from the RTB said she could just add the evidence and add another issue not listed in her application. The tenant said the staff from the RTB said the arbitrator might consider that issue.

Counsel requested that all evidence not submitted with the tenants' application be excluded.

As to the late evidence submitted by the tenants, Rule 3.15 of the Rules sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing.

Here, not all of the tenants' evidence was served within the timelines prescribed by rule 3.15 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlord has not had the opportunity to examine the late evidence of the tenants. On the basis that it would be unduly prejudicial to the landlord, the tenants' late evidence is excluded.

Additionally, the tenants were informed that I would only be considering the issues put forth in their application. I therefore did not consider their request for a reduction in monthly rent or any other issue.

Issue(s) to be Decided

Does the Residential Tenancy Act apply to this dispute?

If it does, are the tenants entitled to repayment for the costs of emergency repairs and an order suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

Jurisdiction –

Counsel submitted that the tenants' application was filed under the Residential Tenancy Act; however, the tenants live in a manufactured home in a manufactured home park and the jurisdiction therefore fell under the Manufactured Home Park Tenancy Act.

Counsel further submitted that co-tenant, NDS, is an occupant of the manufactured home and is not a tenant. Further NDS has described herself as a roommate.

Counsel further submitted that the actual tenant, WN, had a tenancy agreement which listed another tenant, and that other tenant is no longer living in the manufactured home. Counsel said that there is nothing signed by the landlord which indicates that NDS is a tenant.

The landlord submitted that her father is WN, and that she purchased the manufactured home for him to live in. The evidence is that the landlord has a Manufactured Home Park Tenancy Act tenancy agreement with the owner of the Manufactured Home Park, and rents the site from him. In turn, the landlord confirmed that she collects rent that is paid as rental assistance from BC Housing, for both the listed tenants here, as they are on disability.

Repayment for the costs of emergency repairs –

The tenants submitted that they have had the front stairs repaired, as they were falling off the house. Additionally, the tenant submitted that the carpet had to be replaced due to bedbugs, and she is entitled to carpet removal, flooring installation, and bedbug clean-up.

In response, the landlord submitted that the stairs are functioning fully and the tenant apparently referred to labour completed in 2019; however, the first request for repair to the stairs was on May 1, 2020, and the top boards were replaced on May 26, 2020. The landlord submitted she was unaware of what labour was done on the front stairs, as shown by her photographic evidence.

The landlord submitted that she traveled to the property in January 2019 to remediate the bedbugs, and was puzzled why the tenant would not make a request for monetary compensation until April 2020.

The landlord submitted that the issue of carpet replacement and disposal of furniture took place in 2019, and she was not made aware of any of the issues until this year.

The landlord submitted that it was the tenants' choice to install flooring, and it was done without her knowledge or approval. Nonetheless, according to the landlord, she paid NDS $150 for her six hours of labour.

Suspending or setting conditions on the landlord's right to enter the rental unit –

Tenant, NDS, says she is WN's live-in friend, roommate, and caregiver.

Tenant, NDS, submitted that just as soon as the Covid-19 pandemic started, the landlord called her father and screamed at him, telling him he had to move out of the manufactured home by July.

The tenant said that the landlord's aunt and uncle showed up early one day to do repairs, but instead, they had a picnic. The tenant said she asked the landlord not to send her uncle again, and she submitted that the landlord and her counsel are bullies.

The tenant asserted that she and WN are constantly harassed by the landlord and wants the harassment to stop.

Landlord's response –

The landlord referred to her evidence, which included a large amount of emails from NDS, at least 80 emails. The landlord requested restrictions on the amount of communication between the parties.

The landlord also referred to the police reports to show she was not the one harassing the other.

The landlord submitted that she has no need to visit the property, or contact the tenants, unless they make more requests for repairs. The landlord submitted that she only visited the manufactured home park to facilitate the repairs that the tenant requested.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Jurisdiction –

Section 2 of the Residential Tenancy Act states that the Act applies to tenancy agreements, rental units, and other residential property. A rental unit is defined as a living accommodation rented or intended to be rented to a tenant.

Section 1 of the Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 2 of the Manufactured Home Park Tenancy Act states that the Act applies to tenancy agreements, manufactured home park sites and manufactured home parks.

Residential Tenancy Branch Policy Guideline 9 states that if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy was created, unless there are circumstances that suggest otherwise.

Some factors that may weigh against finding a tenancy are a security deposit is not required and the occupier pays property taxes and utilities, but not a fixed amount for rent, among others.

In the circumstances before me, I find on a balance of probabilities that the parties agreed upon an oral, month-to-month tenancy agreement. In reaching this conclusion, I considered that while the tenant may or may not have originally moved in to be a caregiver to the landlord's father, WN, after the original co-tenant moved out, the landlord is now collecting the monthly rental payments from BC Housing on behalf of the tenant, NDS.

I therefore find that NDS is a tenant.

As to which Act applies, I find the tenants are renting the manufactured home as a living accommodation. They are not renting the manufactured home site, the landlord is renting the site from the owner, and in turn, is renting out the home she owns to the tenants.

I therefore find the Residential Tenancy Act applies to this dispute, and for all the above reasons, I find I have jurisdiction over this dispute and authority to decide the tenants' application.

Repayment for the costs of emergency repairs –

As defined by section 33 of the Act, emergency repairs are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing,

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

In this case, there was undisputed evidence that some of the issues complained of, such as the stairs and bedbug infestation had been ongoing for over a year.

In addition to that, I do not find any of the issues complained of by the tenants are an emergency repair as defined by the Act and may only make emergency repairs when emergency repairs are needed.

I therefore dismiss the tenants' claim for the costs of emergency repairs.

The tenants' remedy for necessary repairs are addressed in section 32 of the Act. I caution the tenants that if true emergency repairs are ever needed or required, there is a process they must follow, as outlined in section 33(3), as follows:

A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Suspending or setting conditions on the landlord's right to enter the rental unit –

Much of the tenants' evidence on this point was a series of emails between the tenants and the landlord. The tenants suggested that the landlord has been harassing them. In

her application, the tenants explained that the landlord refused to reimburse them or give a reduction in monthly rent.

The landlord in turn, said it was the tenants who are harassing her, referring to her email evidence and the police reports. The landlord additionally states that the tenant has made it difficult for her uncle, who lives in the area, to attend the rental unit to make repairs.

Due to the vague explanation in the tenants' application and the above conflicting evidence, I find the tenants have not proven on a balance of probabilities that the are entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit. I dismiss the tenants' request for the order as a result.

Conclusion

For the above reasons and insufficient evidence of the tenants, I dismiss their application in full.

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 15, 2020

Residential Tenancy Branch