



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 20, 2022 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Advocate for the Tenant appeared at the hearing. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and Tenant’s evidence in December of 2021.

The Landlord testified that they served their evidence on the Tenant in person April 11, 2022. The Advocate testified that they spoke to the Tenant who said the Landlord’s evidence was received by them a couple of weeks ago. The Advocate acknowledged the Landlord served their evidence on the Tenant in time.

The Advocate sought an adjournment on the basis that they did not receive the Landlord’s evidence from the Tenant and therefore are not prepared to represent the Tenant at the hearing. The Advocate acknowledged that the need for an adjournment did not arise from the timing of service of the Landlord’s evidence. The Advocate stated

that they could proceed with the hearing but would prefer an adjournment. The Landlord did not agree to an adjournment.

I considered rule 7.9 of the Rules which states:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I denied an adjournment because the need for one arose due to the Tenant not providing the Landlord's evidence to the Advocate and therefore through no fault of anybody other than the Tenant. The Advocate did not explain why the Tenant did not attend the hearing to address the Landlord's evidence. The Advocate did not explain why the Tenant did not provide the Landlord's evidence to the Advocate in time for the Advocate to prepare for the hearing. In the circumstances, I found the need for an adjournment arose due to the Tenant neglecting to take steps to ensure they were adequately represented at the hearing. I did not find this neglect by the Tenant a compelling basis to grant an adjournment.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony and submissions of the parties as well as the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

The Tenant sought an order that the Landlord address a racoon infestation in the crawl space of the rental unit.

The parties agreed the tenancy started around five years ago and is a month-to-month tenancy. The parties agreed rent is \$828.00 per month due on the first day of each month.

The Advocate provided the following testimony and submissions. The Tenant discovered racoons in the crawl space of the rental unit and raised this issue with the Landlord because the racoons were loud and causing the Tenant a lot of stress. Further, the Tenant's children play outside, and the Tenant was concerned about racoons being around. The Landlord did not see the racoons as an issue that needed to be addressed and therefore a Pest Control letter was sent to the Landlord asking that the Landlord deal with the racoons in a timely manner. The Advocate followed up with the Tenant three weeks later and the Landlord still had not done anything about the racoons. The Advocate last spoke to the Tenant about the racoons being an issue February 04, 2022.

The Landlord provided the following testimony and submissions. The Landlord attended the rental unit January 01, 2022, and walked around the house with the Tenant. It had snowed and there were no racoon tracks around the house. The neighbours of the rental unit have chickens and they were on the rental unit property. In the Landlord's experience, there would not be chickens in the area if there were racoons around. The Landlord attended the rental unit a second time and did not see any racoon tracks around the house. The Landlord called the SPCA, pest control and wildlife and nobody would deal with racoons. The wildlife staff told the Landlord to put bleach-soaked rags in the area where the racoons are, and the Landlord had someone do this. The individual went under the house and saw no evidence of racoons or rodents of any kind. The Landlord did the best they could with the knowledge they had; however, they never saw evidence of racoons. The Landlord believes the issue was temporary and the racoons have moved on.

In reply, the Advocate advised that they have no reason to disbelieve the Landlord in any way and that the Landlord is thorough and cares about the rental unit property.

The Tenant submitted the Pest Control letter sent to the Landlord.

The Landlord submitted photos of the rental unit property.

Analysis

Section 62 of the *Residential Tenancy Act* (the “Act”) states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 32 of the *Act* states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When 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 claim and the claim fails.

I am not satisfied based on the evidence provided that there is a racoon issue on the rental unit property.

The only documentary evidence the Tenant provided is the Pest Control letter which was authored by the Tenant and therefore is not strong evidence to corroborate the Tenant’s position. The Advocate testified that there was a racoon issue as recent as February 04, 2022; however, the Advocate is simply stating information provided to them by the Tenant and does not have personal knowledge of a racoon issue. The

Tenant did not appear at the hearing to provide affirmed testimony about a continuing racoon issue. The Landlord did appear and provided affirmed testimony that they have attended the rental unit, and sent others to the rental unit, and have not seen evidence of a racoon issue. The Landlord also provided photos of the rental unit property to support their position. Further, the Advocate advised that they have no reason to disbelieve the Landlord in any way and that the Landlord is thorough and cares about the rental unit property.

In all of the circumstances, I am not satisfied based on the evidence provided that there continues to be a racoon issue on the rental unit property and dismiss the claim without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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

Dated: April 22, 2022

Residential Tenancy Branch