



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes LAT, OLC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The accepted issues for the tenants were a request for authorization to change the locks to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the filing fee. Other issues originally listed in the tenants' application were severed as per an Interim Decision.

The hearing began on November 14, 2022, and could not be concluded due to time constraints. An Interim Decision was rendered on November 15, 2022, and that Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The hearing reconvened on March 10, 2023, and could not be concluded due to time constraints. An Interim Decision was rendered on March 12, 2023, and that Interim Decision is incorporated by reference and should be read in conjunction with this final Decision.

At all hearings, the parties and the landlord's legal representative, DG, at the final hearing, were provided the opportunity to present their affirmed testimony and relevant, accepted evidence and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

During the final hearing, the tenants confirmed that they made the decision to move out of the rental unit, gave notice to the landlord, and will be vacating on September 1, 2023. Despite ending the tenancy, the tenants expressed they wished to proceed on their application, due to the fact they still had weeks until the end of the tenancy.

As per the Interim Decision of March 12, 2023, the landlord was to proceed at the final hearing with the landlord's full response to the tenants' application. The landlord's legal representative, DG, began by making oral submissions, and providing a response to the tenants' remaining claims.

During these submissions, DG said that the landlord has agreed to those requests. I note that during the submissions, the landlord continued to attempt to interrupt, or talk over her legal representative and DG continued to remind the landlord that they had discussed these matters prior to the hearing, and agreed to the concessions being put forth by DG.

As will be set out in this Decision, I found it unnecessary to list the tenants' submissions from the two earlier hearings, for the reasons listed.

Issue(s) to be Decided

Are the tenants entitled to the orders sought as listed above and recovery of the filing fee?

Background and Evidence

I heard evidence the tenancy started on December 1, 2021, monthly rent is \$2300 and the tenants paid a security deposit of \$1150. Filed in evidence was the written tenancy agreement.

As to the tenants' request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenants wrote the following in their application as follows:

1. We request compliance with our right to peaceful & quiet enjoyment, free of unreasonable disturbance and harassment. 2. We request that our landlord stop making requests that do not fall within the scope of the tenancy agreement, including moving our propane tank from the balcony, closing our blinds / boarding the windows, laying carpets / rugs down on our floors. 3. We request that the backyard be maintained, including pruning / removal of dead trees hindering the entrance & yard.

[Reproduced as written]

The tenants testified at length about their claim during the first and second hearings. The tenants referred to their documentary evidence and photographs.

At the final hearing on July 6, 2023, DG submitted that both parties agreed to part ways and there was a lot of conflict on both sides. DG submitted that both sides want to be free of conflict in the final weeks of the tenancy.

As to the tenants' requests, the DG said that the landlord was willing to not send the tenants emails, or very many emails, during the balance of the tenancy.

As to the tenants' request regarding the blinds, the landlord agrees to not ask the tenants to close their blinds or board the windows.

As to the tenants' request that the landlord stop asking the tenants to move their BBQ propane tank, the landlord agrees to not make any further requests.

The landlord agrees to not request the tenants to lay carpets or rugs in their rental unit.

As to the backyard maintenance, the landlord, through DG, said the backyard has been cleaned and trimmed.

As to the hot water tank, DG submitted that the landlord checked with the company installing the tank and was told that tank was a sufficient size for the residential property. The water tank needs an hour of recovery time. DG submitted further that

given that there is less than 2 months until the tenancy ends, he does not think it is appropriate to require the landlord to install a larger tank.

DG submitted that the landlord is aware that they have to provide the tenants with sufficient notice to enter the rental unit and will do so, and not show up at the tenants' door. DG said that the landlord can give the tenants the notice of entry by email or attaching it to the tenants' door.

The landlord's witness testified that they are a neighbour and have seen that the backyard is beautifully kept.

In cross-examination by tenant, CM, the witness said they have not been in the back yard and did not see if any limbs were impeding use of the back yard.

Apart from their earlier testimony and evidence at the first and second hearings, the tenants submitted it was not the number of emails from the landlord, but the content of the emails that concerned the tenants. The tenants further submitted that they never made noise complaints about any other tenant living in the residential property and that they never brought this issue up in the dispute. Further, the tenants said the landlord continues to shout at the tenants about the BBQ. There are several low hanging branches in the back yard that have never been addressed by the landlord throughout the tenancy.

As to the tenants' request for authorization to change the locks to the rental unit, the tenants in their amended application wrote the following:

Since our dispute resolution submission in June 2022, our landlord has continued to enter access our premises and suite without serving proper written 24-hour notice. At first we considered this under the umbrella of 'loss of enjoyment/harassment', but now believe that she will continue to do this in the future. We wish to be able to change our locks as a matter of safety and privacy.

The tenants previously submitted their evidence in support of this issue at the first and second hearings.

At the final hearing, DG submitted that the landlord had concerns about the BBQ propane tank.

The tenants responded by submitting that they are breaking no by-laws and that the location of the tank was not dangerous. Further, the landlord was interfering with their rights to enjoy their rental unit.

Analysis

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

As ordered in a previous Interim Decision, the tenants' monetary claim was dismissed with leave to reapply.

The remaining two issues noted above are requests for orders against the landlord for a tenancy ending on or before September 1, 2023. Nonetheless, I find the tenants are still entitled to their quiet enjoyment of the rental unit until the end of the tenancy. As the landlord, through their legal representative, has agreed to most of the tenants' requests, I do not make any findings as to the merits of these claims by the tenants. I do, however, issue orders to ensure that the remaining time of the tenancy is conflict-free and to correlate to the landlord's agreements.

I order the landlord to refrain from sending emails to the tenants for the duration of this tenancy, except in relation to service of a notice to enter the rental unit.

As to the landlord's right to enter the rental unit, I order the landlord to comply with section 29 of the Act. A landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The landlord must provide the tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door or by email, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

I order the landlord to immediately cease making requests of the tenants for closing their blinds or boarding the window, for placing carpets or rugs in the rental unit, and from moving their propane BBQ tank.

In considering the remaining two other requests of the tenants in this matter, I have taken into consideration that the tenants have provided notice to end the tenancy to the landlord, effective by September 1, 2023, which means the tenancy is ending shortly.

For this reason, I decline the tenants' request that I order the landlord to replace the hot water tank. The residential property has shared accommodation with another tenant and the landlord. When viewing the photographs filed by the parties, I find the home to be an older home and the current hot water tank may very well meet housing standards having regard to the age, character and location. Additionally, in consideration that the tenancy is ending by September 1, 2023, even if I were to order the landlord to replace the hot water tank, which I do not, there remains a possibility that the landlord would not be able to accommodate a replacement in the short time left.

As to the backyard and the tenants' request for pruning, I have reviewed the tenants' photographs. Given that the tenancy is ending shortly, I find no reason to order the landlord to undertake a project to remove the limbs and prune the tree. While the tenants may very well have to duck their heads when entering or leaving the property, I do not find from their photographic evidence that the entrances to the yard are blocked.

Further to the above, I order the landlord to comply with section 28 of the Act which states that a tenant is entitled to quiet enjoyment including, but not limited to, rights 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 the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

As I have issued orders for the landlord to comply with the Act as to notice and entry to the rental unit, I decline to allow the tenants to change the locks to the rental unit.

In this case, the nature of the tenants' dispute resolution has changed since the tenants filed their application, as requests for orders for landlord's compliance contemplate an ongoing tenancy.

The tenants indicated they will file another application for their monetary claim. I find it necessary to specifically state I am making no findings on the merits of the tenants' claims in this Decision and nothing in this Decision should reflect that I did so. I make the above orders due to the landlord's agreement, and further, order the landlord to comply with their obligations under the Act, which is already their legal obligation, just as it is for the tenants.

The parties are reminded to be civil to each other for the duration of this tenancy, and the landlord is cautioned that until the tenancy ends, the monetary claim of the tenants may continue until the end of the tenancy, if they violate the terms of their agreements, as noted above.

Using my discretion under the Act, I award the recovery of the \$100 filing fee. **I authorize** the tenants a one-time rent reduction in the amount of **\$100** from a month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction.

Conclusion

The tenants' application in part was settled and orders were issued to the landlord to comply with their settlement.

No findings were made on any part of the tenants' application, for the reasons above.

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 12, 2023

Residential Tenancy Branch