



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, FF, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order that the landlord make repairs to the unit, site or property; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and one of the landlords attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The landlord also called one witness, who gave affirmed testimony and was subject to cross examination by the tenant.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on April 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. In mid-January, 2011 the landlord collected a security deposit from the tenant in the amount of \$350.00. No move-in condition inspection was completed, nor was a written tenancy agreement.

The tenant testified that the latch that is supposed to hold a chain on the door to the rental unit is broken and the chain is missing. A photograph of the door was provided in advance of the hearing. She further testified that the door has bad scratches on it and

the chain has been ripped off. The door has been left in a state that causes splinters. Further, the two bedroom doors have scratches and marks on them, and the second bedroom door has a hole in it consistent with being punched.

The tenant further testified that the landlord had the cabinet doors in the kitchen painted before she moved in. The doors had been removed for painting but were not installed correctly when they were put back. One cupboard door came off the cabinet when the tenant opened it.

The tenant also testified that the fan in the bathroom, and in the bathrooms of adjacent units are so loud that one of the landlord's employees described it as a 747. She stated that the landlord told her it was a new fan, but it does not do its job relieving condensation from the bathroom and it's affecting her right to quiet enjoyment. She stated that stuff drips down the walls and the fan does not eliminate any condensation. She further testified that she hasn't slept since she moved in. The tenants in the apartment above her unit turns on the fan at 2:00 a.m. every night for no less than 40 minutes. She bought ear-plugs but that didn't help, so the tenant stayed in a hotel for 2 nights. The tenant called the landlord, but she did not return her calls. On April 15, 2011 the landlord's carpenter attended the rental unit without any notice to the tenant. She let him in when he told her that the landlord had asked him to look at the fan. He agreed that all fans around her unit were very loud. The tenant bought a portable fan.

The tenant also testified that the patio door doesn't open. She stated that when she and the landlord walked through the unit before the tenant moved in the landlord wanted the tenant to help her open it, but the tenant refused. The tenant has a herniated disk and a bad knee. The maintenance man did some lubricating, and told the tenant to wait till spring, it might loosen up, but there is no difference yet to the door. Also, the screen in the patio door is very old, stained and no longer travels on the tracks. She stated it is also very difficult to move.

The tenant also testified that before she moved in she went to the unit and cleaned the bathroom because it smelled very strong of urine. When she went back the next day, someone had used the toilet, left the lid up, left urine on the toilet and on the floor, and the tenant found a screw driver on the counter and debris in the sink. She ran into the landlord and told her what she found, but the landlord just dismissed her.

The landlord further failed to provide a stopper for the bathtub. The tenant asked the landlord for one, but received no response. The tenant bought a stopper. She stated that any time she's managed to talk to the landlord, she explodes and responds inappropriately. The landlord will not return her calls, and the tenant can only speak to her if she finds her in the complex.

The tenant also asked the landlord for proof that the locks had been changed on the unit prior to the tenant moving in, but the landlord would not respond. She stated that since she has moved in, a man had buzzed the intercom looking for someone named Mike. She responded that there was no one there by that name, he asked for her name, which she did not provide, and the man swore at her. Also another man came to the unit on 3 separate occasions. She stated that he was let into the complex by someone else, and banged on her door looking for "Mike." The tenant is concerned for her safety. No 24 hour emergency contact number has been provided to the tenant as required under the *Act*.

The tenant further testified that on April 28, 2011 she put her rent cheque in the landlord's mail slot for the month of May. The landlord has not yet cashed the cheque, and the tenant pointed out that the landlord's evidence package contains a letter from the landlord that states the landlord will not be accepting rent and wants the tenant to move out.

Further, a baseboard inside the unit with nails in it fell off the wall. She called the landlord about it, but received no response.

The tenant also testified that she had complained to the landlord about 2 barking dogs in a unit below. The landlord responded that one of the dogs was going to be put down and the barking would stop. The barking did not stop. The tenant went to the landlord's apartment and a young woman answered the door stating that the landlord was not at home. The tenant asked the woman to let the landlord know that she would be calling the police. When the tenant called the landlord later that day, the landlord yelled profanities at the tenant and told her she would, "throw her ass out on the street." The landlord also told the other tenants that she had received the complaint and the tenants went to her door in a threatening manner. The tenant is genuinely afraid for her safety and takes her cell phone with her to take out the garbage and takes her laundry to a laundry mat despite having laundry facilities in the building.

The landlord testified that the locks were changed before the tenant moved in but does not recall when. All receipts are sent to another office. She stated that after she gave keys to the tenant, no one went into the rental unit.

The landlord admitted that some things may have been overlooked when the parties walked through the rental unit, such as the broken chain on the door. She stated that if the tenant had told her, it would have been fixed.

The landlord does not believe that the bathroom smelled of urine.

The landlord further testified that when the tenant complained about the dogs barking, the landlord talked to the tenants who told her that one of the dogs would be put down the next day. When she advised the tenant of that, the tenant became angry and stated that that was not an option. The tenant called her again a couple of days later and complained about dogs again and called the landlord a liar.

The landlord further testified that she will not be completing a tenancy agreement for this tenant, she wants her out, but has not served the tenant with a notice to end the tenancy.

The landlord's witness testified that he changed the fan before the tenant moved in, but he does not recall when. When asked about changing the locks, he responded that he does not remember.

Analysis

The *Residential Tenancy Act* states that a tenancy agreement exists whether or not it's put in writing. The landlord has effectively entered into a contract with the tenant to provide the tenant with a home to live in, in exchange for rent. The tenant has paid the rent, and the landlord is obligated to provide the tenant with a home and to her right of quiet enjoyment. Therefore, the landlord's comments that she will not provide a tenancy agreement to the tenant and that she wants the tenant to move out will not suffice with respect to this dispute.

The *Residential Tenancy Act* also states that a landlord has a responsibility to maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by a tenant, whether or not the tenant knew that repairs were required when she moved in.

I accept the evidence of the tenant, which was not disputed by the landlord, that the repairs to the rental unit described by the tenant are required.

I also find that the landlord has not addressed the tenant's right to quiet enjoyment. I refer to the Residential Tenancy Policy Guideline #6 which states that unreasonable and ongoing noise, if preventable by a landlord, may be a breach of the covenant of quiet enjoyment. The landlord has a responsibility to ensure that tenants don't disturb each other. Although it may be uncomfortable or inconvenient to a landlord to deal with such complaints, it is the landlord's responsibility in any event. The Policy Guideline also states that: "A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to

correct it.” This applies to the noisy fan and the barking dogs within the apartment complex. The landlord is at liberty to warn those tenants verbally, and if the dogs continue to bark, the landlord can then give written warnings. Failure of any of those tenants to take steps to reduce the noise puts the landlord in a position to issue a notice to end the tenancy.

In the circumstances, I find that the tenant has established a claim for an order that the landlord make repairs to the unit, and that the landlord comply with the *Act*. The tenant has not applied for a monetary order for any breach of the *Act*, but as a result of the landlord’s comments that she will not prepare a tenancy agreement and wants the tenant out, I will order that the landlord complete those repairs or the tenant will be at liberty to reduce the rent payable.

Section 33 of the *Residential Tenancy Act* also requires the landlord to post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. The landlord has not provided a name or phone number, and must respond to the tenant’s concerns. Merely ignoring the tenant will not suffice; the landlord can be held responsible if emergencies exist and the tenant has no one to call.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby order that the landlord complete all the necessary repairs to the rental unit, including, but not limited to repairing all doors in the rental unit, provide proof to the tenant that the locks were changed immediately prior to the tenancy or change the locks again, repair the cupboard doors, repair the patio door and screen so that they easily open, replace the baseboards that have fallen off the walls and inspect all others to ensure they don’t fall off as well. I further order that the landlord have those repairs completed before the end of May, 2011. If the landlord fails to complete those repairs by the end of May, 2011, the tenant will be at liberty to apply for a monetary order for the landlord’s failure to comply with the *Act* and this order. I further order the landlord to investigate the loud fans in the bathrooms of this rental unit and the adjoining rental units. If the fans cannot be adjusted to reduce the noise considerably, the landlord must take steps to remove them and replace them with fans that do not affect a tenant’s right to quiet enjoyment. It is not acceptable for a tenant to stay in a hotel due to repairs required on the rental unit that are ignored by the landlord. The landlord must complete all fan repairs by the June 15, 2011, and if the landlord fails

to do so, the tenant will be at liberty to apply for a monetary order for the landlord's failure to comply with the *Act* and this order.

I further order the landlord to take steps to have the dogs of other tenants reduce the barking considerably.

I further order the landlord to provide to the tenant a name and phone number of a person the tenant is to contact for emergency repairs forthwith.

I further order that the tenant reduce the rent payable for the month of June, 2011 in the amount of \$50.00 to reimburse the tenant for the cost of this application.

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: May 10, 2011.

Residential Tenancy Branch