



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, RR, FF, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make repairs; and to reduce rent for repairs, services, or facilities agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant testified that she had served additional evidence to the landlord and to the Residential Tenancy Branch on April 18, 2012. The landlord confirmed that he had received this additional evidence except for page 7. I note the evidence was not file in the tenant's Application file and as the landlord was prepared to respond to the additional evidence I allowed the tenant to submit the additional evidence to me.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement; to make repairs; and to reduce rent for services that have been restricted and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 32, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began in October 2007 as a month to month tenancy for a current monthly rent of \$975.00 due on the 1st of each month and that no security deposit was paid.

The landlord testified that while there are laundry facilities in the upper rental unit the tenant in the basement rental unit has been allowed to use the laundry facilities for the duration of the tenancy.

The parties agree that on or about April 2, 2012 the landlord locked access to the laundry area and posted a notice for the basement tenant advising her that effective on April 2, 2012 the laundry facilities will be available every Saturday from 10 a.m. to 4

p.m. and asking the tenant to remove any items that were not laundry related that she had previously stored in the laundry area.

The tenant testified that the tenant in the upstairs unit continually causes disturbances that include a dog incessantly barking; stomping around to let the dog out in the middle of the night; starting laundry at 6:15 a.m.; loud swearing and throwing boxes around.

In her written submission the tenant also states she can hear the upstairs tenant's phone conversations and she can even hear him using the bathroom. The landlord testified that he believes the tenant's claims are exaggerated. While the landlord acknowledged there is soundproofing between the units he believes that some of the noise problem can be attributed to hard surface flooring in certain areas of the unit.

The landlord also testified that the upstairs tenant has complained to the landlord that anything he has done to the downstairs tenant have been because she has shut off electrical breakers or other things that impact his quiet enjoyment.

The tenant seeks compensation in the form of \$32.05 for every day that she is not able to have "peaceful enjoyment" of the property; compensation in the form of an unspecified rent reduction; to a rent reduction in the amount she spends to complete laundry offsite including taxi charges and laundry costs; compensation in the form of an unspecified rent reduction for "the time lost at work with RTO, the landlord, and pest control people but based on an hourly rate of \$20.10; compensation for the costs "associated with this applicant and any further application."

The tenant seeks an order allowing her to arrange to have the outside and inside fumigated for ants and compensation in the form of unspecified rent reductions for the costs associated with the pest control treatment and the costs of staying in a hotel for 48 hours.

The tenant also seeks an order to have the landlord complete promised renovations to the bathroom. The landlord acknowledges he has plans to complete a cosmetic repair to the bathroom but that there are no functional problems with the bathroom. The tenant asserts there is a problem with the bathroom floor including being the sight that ants are entering the unit from.

The tenant has submitted a "Statement of Expenses to April 17, 2012 and includes the following "charges":

Description	Amount
April 9, 2012 - Upstairs tenant throwing things around, swearing and yelling	\$32.05
April 10, 2012 Upstairs tenant doing laundry at 6 a.m. cannot shower	\$32.05
April 12, 2012 – Upstairs tenant doing laundry at 6:30 am cannot shower	\$32.05
April 11, 2012 – Cab to and from Laundry Mat	\$14.00

April 11, 2012 – Laundry Service	\$22.96
April 11, 2012 – Lost 4 hours from work to do RTO filing and laundry	\$80.48
April 11, 2012 – Application for Dispute Resolution filing fee	\$50.00
April 19, 2012 – 3:40 a.m. disturbance upstairs unable to sleep	0
April 19, 2012 – 6:15 laundry again	0
April 21, 2012 – laundry room not unlocked	0
April 23, 2012 – vehicle parking	0
Total	\$263.59

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 27(2) of the *Act* allows a landlord to terminate or restrict a service or facility other than one that is either essential to the tenant's use of the rental unit as living accommodation or the provision of the service or facility is a material term of the tenancy agreement.

If the landlord does want to terminate or restrict that service or facility the Section outlines he may do so by giving the tenant 30 days' written notice, in the approved form, and reduces the rent in an amount equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In the case before me, I find the provision of laundry facilities on the residential property is neither essential for the tenant's use of the rental unit as living accommodation nor a material term of the tenancy agreement. As such, I find the landlord may either terminate or restrict laundry facilities.

However, as the landlord did not comply with the requirements to provide 30 days' written notice or provide a rent reduction in an amount equivalent to the reduction in the value of the tenancy agreement I order the landlord to reinstate the tenant's access to laundry facilities to that which she enjoyed prior to his notice of April 2, 2012. Should the landlord wish to restrict or terminate these services he may do so in accordance with Section 27.

In addition as a result of this non-compliant restriction I find the tenant is entitled to compensation for having to access offsite laundry on April 11, 2012. I find that it would

not be reasonable for the tenant to have to haul two loads of laundry to a bus stop no matter how close to either her home or a laundromat and I accept the value of transportation for the purposes of doing laundry to be \$14.00 and for the charges for laundry of \$22.96.

Section 28 of the *Act* stipulates a tenant is entitled to quiet enjoyment including, but not limited to rights of reasonable privacy and freedom from unreasonable disturbance. In order to be entitled to compensation for unreasonable disturbance the burden of proof is on the tenant to provide sufficient evidence to substantiate her claim that she has been unreasonably disturbed.

In relation to the tenant's claim for compensation for loss of quiet enjoyment, from the description provided by the tenant that she can hear the upstairs tenant's phone conversations and when he is using the bathroom and from the lack of any supporting evidence to corroborate her claims regarding any potential more extreme disturbances and the landlord's testimony that disputes the tenant's claim, I find the tenant has failed to establish that she has been unreasonably disturbed. I dismiss this portion of the tenant's Application.

The tenant seeks compensation for time spent preparing her Application for Dispute Resolution and for dealing with her landlord and with pest control people. As these are all choices the tenant has made with how she wants to deal with tenancy issues, I find the landlord cannot be held responsible for these charges and I dismiss this portion of the tenant's Application.

In relation to the portion of the tenant's Application seeking an order to deal with the ant problem, I find the tenant has failed to provide any evidence to corroborate her claim that there is an ant problem sufficiently difficult that it requires the intervention of professional pest control. I therefore dismiss this portion of the tenant's Application.

And finally in regard to the tenants' Application seeking to have the landlord complete bathroom repairs and any subsequent costs for relocation during the completion of any repairs, I note that Section 32 stipulates a landlord must provide and maintain residential property in a state of repair and decoration that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the case before me, I find the tenant has failed to provide any evidence that these repairs and/or renovations are required for the landlord to comply with his obligations under Section 32 of the *Act*. I therefore dismiss this portion of the tenant's Application.

For all of the reasons noted above and in light of my order to have the landlord reinstate full access to the tenant for laundry facilities, I dismiss the portion of the tenant's seeking a rent reduction.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$61.96** comprised of \$14.00 laundry transportation; \$22.96 for laundry and the \$25.00 of the \$50.00 fee paid by the tenant for this application as she was only partially successful in her claim. I order the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: April 27, 2012.

Residential Tenancy Branch