



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This was the hearing of an application by the tenant. The hearing was conducted by conference call. The tenant attended with a friend who acted as her advocate. The named landlord participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?
Should the landlord be ordered to make repairs?
Should the tenant be granted a rent reduction?

Background and Evidence

The rental property is mixed use building in Victoria. There are two residential rental units and a commercial tenant in the property. The rental unit is on the ground floor. The commercial space is adjacent to the rental unit and there is second rental unit above the tenant's unit.

The tenancy began in January 2007. When the tenancy began the commercial space was occupied by a clothing store. The garbage bins and recycling for the rental property are located outside the building in a fenced area beneath the tenant's bedroom window. The tenant testified that the commercial space was taken over by a bakery-cafe and this has increased the quantity of garbage and more particularly organic material in the garbage. The noise from the use of the containers and the smell from the food waste have seriously affected the tenant's use and enjoyment of her unit. She said that raccoons frequent the garbage bins and climb onto the fence directly underneath her window; she is fearful one will come into the rental unit through her bedroom window. She said that people often sort through the recycled containers outside her window at odd hours, disturbing her in the rental unit. The tenant requested that the garbage and recycling be moved to a new location in front yard area of the rental property. The tenant identified a suitable location in a supplied photograph.

At the hearing the landlord agreed that the garbage and recycling should be relocated to the area proposed by the tenant. He said that he needs to discuss the arrangement with his commercial tenant and to ensure that the relocation is acceptable to the

municipality before the relocation is carried out. He said that he expects the process will take a month or thereabouts.

The tenant testified that although she claimed a monetary order in her application, she is not really seeking a monetary award, but she is seeking an award in the form of a rent reduction to create an incentive for the landlord to effect the relocation in a timely way.

In the landlord's reply statement he said that he was seeking payment of a sum of money from the tenant: "for her failure to honour her contractual obligation in the attached rental agreement". He also requested a rental increase of \$30.00 per month. The landlord said that he was told by a Residential Tenancy information officer that this was an appropriate request by way of reply to the tenant's application.

Analysis and conclusion

I accept the tenant's documents and oral testimony as having established that the placement of the garbage facilities beneath the windows of her rental unit has significantly affected her use and enjoyment of the rental unit, particularly since the cafe has become more successful and busy. I find that the garbage and recycling should be relocated as requested by the tenant and as agreed by the landlord. I therefore order that the landlord take all necessary steps to move the garbage and recycling bins to a new location away from the rear windows of the tenant's rental unit as soon as practicable.

So as to acknowledge that the placement of the garbage bins has caused the tenant a loss of use and quiet enjoyment and to create an incentive for their prompt relocation, I grant the tenant a rent reduction in the amount of \$100.00 per month commencing June 1, 2012 and continuing until such time as the garbage and recycling bins have been relocated. The tenant may deduct the sum of \$100.00 from the rent due for June and for each subsequent month until the relocation has been completed. The tenant is entitled to recover the \$50.00 filing fee for this application; she may also deduct this sum from a future instalment of rent.

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 24, 2012.

Residential Tenancy Branch