



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Walker Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Although English was clearly not the tenant's first language and I had difficulty understanding her at times, I am satisfied that her sworn testimony and a copy of her August 22, 2013 letter to the landlord entered into written evidence by the landlord enabled me to understand the details of her claim and render a decision on her application.

The tenant testified that she handed a copy of her dispute resolution hearing package to the landlord's resident manager after September 13, 2013. The landlord's male representative (the landlord) confirmed that the tenant's dispute resolution hearing package was provided to the resident manager and forwarded to the landlord's office. I am satisfied that the tenant has served her dispute resolution hearing package to the landlord in accordance with the *Act*.

The tenant confirmed that the landlord provided her with copies of the landlord's written evidence. The landlord's written evidence was five pages which included a copy of the tenant's handwritten August 22, 2013 letter outlining her concerns. I am satisfied that the landlord provided the tenant with copies of the landlord's written evidence.

The tenant testified that she provided the landlord's resident manager with written evidence. However, it was unclear if by this statement she meant that she had given the resident manager letters/notes in the past or whether she actually submitted written evidence to the resident manager after she submitted her application for dispute

resolution. The landlord said that he was unaware of any written evidence package from the tenant submitted for the purposes of this hearing, other than the hearing related documents included in the tenant's dispute resolution hearing package. I advised the tenant that the Residential Tenancy Branch (the RTB) had not received any written evidence from her. Although I gave the tenant an opportunity to describe the details of the written evidence she claimed to have provided to the landlord, when she served that evidence and how she provided it to the RTB, she had few details other than to say that she gave written material to the resident manager. She said that she wrote down everything, which shed little light on this matter. Since I was not at all satisfied that the tenant had provided written evidence for this hearing to either the landlord or the RTB, I advised the tenant that I would not be considering any written evidence she claimed to have submitted for the purposes of this hearing.

Issues(s) to be Decided

Should an order be issued to the landlord to conduct repairs? Is the tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided by the landlord?

Background and Evidence

This one-year fixed term tenancy in a multi-unit rental building began on July 1, 2013. Monthly rent is set at \$800.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid on July 10, 2013.

The tenant's application for dispute resolution alleged that the landlord had not properly maintained the rental unit and was not taking proper measures to deal with issues of noise and marijuana use by the tenants who live above her. In her application for dispute resolution and her August 22, 2013 letter to the landlord, she claimed that the fan in her washroom was not working. She also claimed that her refrigerator was not working properly and was making a strange noise. In her letter, she asked the landlord to "follow up on these issues."

The landlord provided sworn testimony and written evidence that one of the landlord's staff inspected the rental unit to look into her concerns on September 13, 2013, shortly after receiving the tenant's dispute resolution hearing package. In a September 13, 2013, memo prepared by the landlord's property manager, the results of that visit were outlined as follows:

1. *Fan is not blowing inside the bathroom but exhaust moisture air from bathing.*
2. *Too much of stuff putting into the fridge and not completely close will affect the function of the fridge.*
3. *Had discussion with the above Tenant quiet enjoyment at night time...*

The landlord testified that the tenant appeared to be under the mistaken understanding that the bathroom fan was supposed to blow air into her bathroom. He correctly noted that the purpose of an exhaust fan in a bathroom is to draw air **out** of the bathroom and into the venting attached to that fan. He said that the bathroom fan was checked by the property manager and is working properly. He also testified that the fridge had been inspected and problems resulted from so many items being packed into the fridge that it did not close properly. The landlord also testified that the property manager spoke with the upstairs tenant who agreed to take measures to reduce the noise coming from that rental unit.

At the hearing, the tenant said that:

- the bathroom fan was not working the way she wanted it to;
- her kitchen sink dripped water;
- the ceiling above the kitchen also leaked;
- she gets no peace in her rental unit because of the noise coming from upstairs; and
- she continues to smell marijuana smoke in her rental unit.

The landlord testified that there is a resident manager on site available for calls if the tenant has specific items that need repair. He said that so far the tenant has not identified anything that requires repair or additional action by the landlord.

Analysis

Section 32(1) of the *Act* outlines a landlord's responsibility to maintain rental premises

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.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord or current rent if I determine that there has been "a reduction in the value of a tenancy agreement."

Although I have given the tenant's application for repairs and a reduction in rent careful consideration, I am not satisfied that she has provided sufficient evidence to entitle her to an order requiring the landlord to undertake repairs to reduce her monthly rent. Other

than her claim that the landlord has not properly maintained the rental unit, she provided no other evidence to support her application for a reduction in her rent. She produced no witnesses, no written statements from those who could attest to her concerns, and no photographs, videos or any other form of digital evidence. I found her sworn testimony unclear and unfocussed. At the hearing, she introduced new issues not included in her original application. By contrast, the landlord submitted written evidence and sworn testimony outlining the measures that the landlord has taken to review the tenant's concerns identified in her August 22 letter and in her application for dispute resolution. I find each of the landlord's explanations reasonable. I also find that the landlord expressed an ongoing willingness to undertake repairs should repairs become necessary after an inspection by the landlord's property manager.

While the tenant has objected to the activities and noise coming from the rental unit above her, I find that the landlord has taken satisfactory action to raise the tenant's concerns with the upstairs tenant(s). Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. I see insufficient evidence to demonstrate that the landlords have failed to take appropriate action to follow up on the tenant's concerns about her upstairs neighbour.

For the reasons outlined above, I dismiss the tenant's application for an order requiring the landlord to conduct repairs without leave to reapply. I also dismiss the tenant's application for a reduction in rent without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

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: October 25, 2013

Residential Tenancy Branch

