



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, RP, MNDC, FF

Introduction

The tenant applies for an order for repairs to the premises (specifically the relocation of the building's dryer vent) or alternatively a monetary order from the landlord for the loss of use of her patio and windows as a result of the dryer emissions that are vented directly below her unit .

Issue(s) to be decided

1. Is it appropriate to order the landlord relocate the dryer vent?
2. Is the tenant entitled to a rent rebate and rent reduction?

Background and Evidence

This tenancy began July 1, 2018. Rent at that time was \$1,920.00 per month, which including a \$60.00 parking fee. The current rent is \$2,051.00. The tenant rents a first floor suite in a building with a total of 96 suites. The building is about 45 years old. The laundry room is located on the basement level.

The vent for the dryers is situated below the office/guest room window of the tenant's suite. Particulates are emitted as a result of the use of laundry products such as soap, bleach, fabric softeners and dryer sheets. The tenant worries that the emissions could be toxic or hazardous to health. When the dryers are in operation, there is a chemical odor emitted. The nature of the building and prevailing breezes are such that at times a "wind tunnel" occurs, and if the tenant opens her windows at the portion of her home near the vents, the ingress of emissions causes her apartment to smell like a dryer using fabric softener. As a result the tenant keeps her windows closed, and cannot enjoy her deck and patio area.

The existing vent was approved by the City when the original design and construction of the building occurred. The landlord has made investigations, and has determined it is virtually impossible to redirect the vent due to the design and structure of the building. The landlord advises that the dryer exhaust vent has a filter for lint and particles. The landlord has received advice that the dryer system does not violate any code or legislation. The laundry facility cannot be shut down by the landlord, as it serves all the tenants in the building.

Analysis

I accept the landlord's testimony and evidence that the relocation of the dryer vent is not an option in this case, as the cost is prohibitive, and as any such change would simply serve to inconvenience another tenant. Accordingly, as both parties acknowledge, the issue becomes whether the tenant is entitled to compensation in the form of rebated rent in the past, and reduced rent in the future.

This issue is one of a breach of an implied covenant of quiet enjoyment in the tenancy agreement, and a statutory obligation of the landlord to provide a tenant quiet enjoyment and freedom from unreasonable disturbance, found in the section 28 of the Act.

The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inactions, that renders the premises, or a portion of the premises, unfit for occupancy for the purposes for which they were leased.

In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord to address the concern. On the other hand, it is also necessary to balance the tenant's right to quiet enjoyment with other factors that may be out of the landlord's control. For example, tenants must expect a certain degree of everyday noise or odor in a building, whether from mechanical equipment or from other tenants.

I find that the tenant's exposure to ongoing emissions from the dryer have resulted in her inability to enjoy and fully use the premises she rents. I accept her submission that she is affected especially during summer months, when she would like to keep windows open or use her patio, but cannot do so due to the odor and emissions of the dryer. The premises were not rented with any representation that this problem existed, or with any consideration of reduced rent to accommodate the situation. I accept that the tenant has suffered a breach of the covenant of quiet enjoyment.

It may be the case that there is a health concern related to the dryer emissions. The tenant has provided some literature to that extent. Any such health concern is of course a serious issue, and the landlord would be well served to investigate that matter, as it would be more than just one tenant affected. Regarding this particular claim however, I find the tenant has not demonstrated on a balance of probabilities that her own health has been affected by the dryer emissions. There is no medical support from her doctor, or other documented medical assessment to substantiate any ill affect. I do not have the benefit of seeing results of actual tests of the emissions from the dryer vent, to

demonstrate they are indeed toxic or harmful.

I do accept the tenant's evidence that she is adversely affected each year from May through September, in terms of a loss of use and enjoyment of the premises. Logically she is affected more during the summer months (June, July and August) than in May and September, as it is more likely that windows would be opened, and patios used more frequently during that period. I do not agree, however, that the reduced enjoyment of the premises is equal to 1/3 of the monthly rent, as contended by the tenant. She remains able to use and enjoy most of the features of her rental unit. She can sleep in her unit, cook in her unit, and use her washroom. She has use of the common areas and parking area. What she suffers is the discomfort of having windows closed, and the loss of use of the patio area. Valuing this loss is not an exact science, but I have determined that the tenant suffers a loss in May and September of \$75.00 per month, and a loss in June, July and August of \$150.00 per month. This loss has occurred over the course of the tenancy in the past, and totals \$3,375.00. The tenant is entitled to a rebate of rent for this sum. The tenant is also entitled to recover her \$100.00 filing fee from the landlord. The total sum due by the landlord to the tenant is therefore \$3,475.00. The landlord may pay this sum in full to the tenant immediately, or alternatively the tenant may withhold rent until such time as the sum is satisfied. Under the latter option, if December rent of \$2,051.00 is withheld, the balance owing by the landlord to the tenant would be \$1,424.00. The tenant would be entitled to deduct this balance of \$1,424.00 from her January rent, and pay the remainder of \$627.00. Full rent would be paid in February.

The tenant is further entitled to deduct the sum of \$75.00 from future rents for the months of May and September, and the sum of \$150.00 from future rents for the months of June, July and August, until such time as her tenancy ends, or the vent is relocated by the landlord.

Conclusion

The tenant is awarded the sum of \$3,475.00, payable by the landlord to the tenant. The tenant may also deduct the sum of \$75.00 from future rents for the months of May and September, and the sum of \$150.00 from future rents for the months of June, July and August, until such time as her tenancy ends, or the vent is relocated by the landlord.

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: November 15, 2013