



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIWANIS NORTH SHORE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, O

Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- other unspecified remedies.

The landlord's agent, CB ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had authority to speak on its behalf at this hearing. This hearing lasted approximately 56 minutes, in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

At the outset of the hearing, the tenant confirmed that he did not require any "other" remedies. Accordingly, this portion of the tenant's application is dismissed without leave to reapply.

I notified both parties during the hearing that I could not order the landlord to stop construction that was already underway at the rental property, which is what the tenant

had requested in this application. Accordingly, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add a claim for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under section 65 of the *Act*. The tenant said that he mistakenly did not include a monetary claim in his application but that he intended to seek a rent reduction. The landlord consented to this amendment during the hearing.

Issue to be Decided

Is the tenant entitled to an order to allow him to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on June 1, 2011. Monthly rent in the amount of \$815.00 is payable on the first day of each month. A security deposit of \$365.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The tenant seeks a rent reduction of \$50.00 per month until the landlord gets rid of the adult daycare at the rental property, estimated at about three years. The landlord testified that the landlord company contracted with a local health facility for it to rent out a portion of the common property at the rental building for an adult daycare to operate on weekdays between Monday and Friday during regular business hours. He said that this portion is dedicated for the sole use of the adult daycare and when they are closed, this space cannot be used by the residents of the building. He claimed that the construction is still ongoing and the landlord increased the amenity space at the rental property by 6,000 square feet in order to accommodate the adult daycare and the residents. The tenant said that the coffee maker was taken away in one space but the coffee social space was moved to a different area, so he could use that space and did not want to claim for it.

The tenant said that his laundry hours were restricted because the adult daycare uses the laundry machines on the ground floor, where the tenant's rental unit is located. He said that he does laundry twice per week and he cannot use the machines while they are being used. He claimed that he has had to modify his laundry hours and it is an inconvenience to use the laundry machines on the second and third floors because he has to take the elevator and carry heavy laundry.

The landlord disputed the tenant's claim, stating that the tenant is still able to use the laundry machines on the ground floor as well as the machines on the second and third floors if the ground floor machines are being used. He said that all residents and users have to accommodate each other when doing laundry and that the adult daycare simply shares this space during the daytime hours only. He claimed that the tenant has not been prevented from using the laundry machines on the ground floor.

The tenant also stated that there is more pedestrian foot traffic right outside his rental unit door, due to the adult daycare. He said that whereas before there were about 5 to 6 people per day, there is now 17 to 22 people per day, walking back and forth and using the noisy electric door right outside of his rental unit.

Analysis

I dismiss the tenants' claim for a rent reduction without leave to reapply. I find that the tenant is still able to use the ground floor laundry machines, as well as other machines located on the second and third floors of the building. While the adult daycare uses the ground floor laundry machines during the day, the tenant still has use during the day as well as on evenings and weekends. The tenant is not prevented from using the laundry machines on the ground floor.

I also find that while there may be an increase in the amount of pedestrian traffic outside the tenant's rental unit door, due to the adult daycare being there, I find that the tenant failed to show how the noise affected him personally, causing a loss of quiet enjoyment or a loss in the value of his rental unit. He stated simply that there were more people walking more frequently than before and he could hear it when they used the electric door. This adult daycare only operates during the day during regular business hours, not late at night or on evenings or weekends. A reasonable level of noise is to be expected in any multi-unit building where multiple residents reside and other activities are taking place during the day on the weekdays.

Conclusion

The tenant's entire application is dismissed 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: June 27, 2017

Residential Tenancy Branch