



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCEANMIST APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ER, DRI, OLC, RR, RP, FF, CNC

Introduction

The tenant applies for a repair order, an emergency repair order, a compliance order and a rent reduction arguing that the landlord is not properly repairing or maintaining the apartment or the apartment building and has failed to comply with orders made in an earlier arbitration.

At the first hearing of this matter it was determined that the respondent TKOA is not the tenant's landlord. The tenancy agreement states that OA is the landlord. I note that the tenant was similarly corrected in two previous arbitrations and the style of cause was amended accordingly. I have amended this style of cause to reflect the true landlord as the respondent in this matter.

By amendment the tenant seeks to cancel a one month Notice to End Tenancy for cause issued January 3, 2018. At the first hearing Mr. G.B. for the landlord stated he was unaware of the amendment. It was determined that the tenant had sent her amendment to a Mr. T.K. who she thinks is the owner or perhaps the principle of the corporate owner and who lives in a city on the mainland. Mr. G.B. was unable to state whether the landlord OA is a corporate entity (there is no indication of limited liability in the name on the tenancy agreement) or whether it is perhaps a registered business name. He says he has not heard from the owner about receiving the tenant's amendment seeking to cancel the one month Notice.

The Notice the tenant challenges makes clear that it is from OA not TKOA and the Notice gives a local address for service of documents. It was my determination at hearing that the tenant had named the wrong respondent in her challenge to the Notice and had not sent her challenge to the proper address.. Verbally, her application to

cancel the one month Notice was dismissed with leave to re-apply. She was instructed to re-apply immediately and also to request an extension of time to do so in her application. I made no determination about whether time should be extended or the Notice cancelled.

The listed parties attended both hearing days and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed to carry out an order made in a previous arbitration? Has the landlord failed to maintain the premises in a reasonable and habitable state and in compliance with the law and the tenancy agreement? Has there been an unlawful rent increase? Are emergency or non-emergency repairs required? Is a reduction of rent called for in the circumstances?

Background and Evidence

The rental unit is a two bedroom apartment in an older, twenty seven unit, three floor apartment building.

There is a written tenancy agreement. The tenancy started in June 2015. Currently the monthly rent is \$959.00. The landlord holds a \$450.00 security deposit and a \$450.00 pet damage deposit.

The tenant did not testify. Instead, her helper Mr. McK. testified. He says the bannister on the top floor has broken in four places and needs repair. He refers to a previous arbitration decision 857005 requiring the landlord to have the bannister welded if it breaks again.

He says the balcony at the rental unit is too hazardous to use. An order was made in decision 857005 and although the landlord conducted some work on the balcony it is still unsafe, a post is rotting and the wooden slats are not secure.

In the same order the landlord was required to caulk the tub but Mr. McK. says that Mr. G. B. did it himself and he's not qualified. Further, the caulking is substandard and is not holding up.

Mr. McK. says the landlord is in breach of the fire code. A light above an emergency exit has gone out. He says the fire department is pursuing this complaint with the landlord. Further, he says there is no evacuation plan required by law, posted in three places in the building.

Mr. McK. says the landlord has not complied with the 857005 decision by providing information about an asbestos removal project. Nor has it properly cleaned the ventilation ducts as was ordered. He says the vents in question, vents in the hallways, are vents for the gas fire boiler and are blowing air out into the hallways. He wants proof the landlord did all the required cleaning work.

Mr. McK. is concerned that the front steps are slippery when icy. The metal strips on the stairs are not "grooved" and pose a hazard at the main entrance. He complains that the building exterior lights need bulbs and that the darkness is promoting vandalism and theft by a large transient population.

Mr. McK. is also concerned about what he considers to be mould, black in colour, inside a hole in a hallway ceiling. He says that the hole was finally patched three hours before the start of the second hearing day of this matter.

Mr. McK. is dissatisfied with the cleaning schedule around the common areas of the building. He wants a weekly schedule. He says there is no dusting or window cleaning done and that Mr. B.'s girlfriend is the cleaner.

Mr. B. for the landlord testifies that he has complied with the orders made in decision 857005.

He says the ventilation ducts were cleaned by a cleaning company in July 2017. The ducts are not connected to the building heating system. They are ducts to waft air from the rooftop of the building into the hallways to reduce the travel of cooking smells from the apartments.

Regarding asbestos, he says that during a project to convert the building's sauna to a new suite, asbestos was discovered in the drywall mud and floor tiles. A professional renovation company took care of its removal and a certificate of occupancy has been

issued which proves that all laws were complied with. He says the only documents were an inspection sheet that was posted at the building and the tenant has a copy of it.

Mr. B. says that an evacuation plan was posted on all stairwells and the postings have always been there. He sent the arbitrator of 857005 a picture after their hearing. He says it is full compliance with the fire department rules and with the landlord's insurance requirements.

He notes the claim regarding outside lighting was dismissed by the previous arbitrator. The lights haven't been working for the ten years he's been there.

Mr. B. says he caulked the tenant's tub. He has been involved in construction himself. He has renovated 26 units, including cabinet installations and considers himself totalling qualified to caulk a tub.

Regarding the tenant's balcony he says the railing was installed in 2014 and as the result of the order in 857005, the deck of the balcony was painted on July 5, 2017. He produces photos he's taken showing that the tenant was using the deck in April 2017, contrary to the assertions Mr. McK. made on her behalf. The photos show a chair and a dog kennel on the deck.

Mr. B. also notes that his photos taken July 11, 2017 show three damaged deck slats that were not damaged in his earlier photos of April. The photos show what he claims to be direct damage to the slats.

Analysis

Rent Increase

There is no sufficient evidence of an unlawful rent increase. That portion of the application is dismissed.

Exterior Lighting

The matter of the exterior lighting at the building was dealt with in decision 857005 and was dismissed. The issue has been dealt with and the tenant may not re-litigate it in this proceeding.

The Balcony

In file 857005 the landlord was ordered:

By no later than June 30, 2017, the Landlord shall hire the services of a qualified carpenter to repair the wooden railing and decking on the balcony to the rental unit as well as to repair/redo the caulking in the bathtub area as required.

The landlord has not complied with this order. It has not hired anyone as far as the evidence shows. Rather, it has directed its employee Mr. B. to attend to the work. The work, which comprised only the painting of the deck, was not done until July. The tenant's photos show what appears to be the start of rot in one of the supporting corner posts to the balcony railing.

At the same time, the landlord's photos convince me that the tenant has caused intentional damage to the deck slats. The April photos show all slats to be in order. The July photo shows three slats to be out of position. One slat has louvered out from its attachment, one has partially come away at the bottom and one has been cracked outward from the deck at about 25 cm above its bottom attachment.

The damage to the cracked slat could only reasonably come from a significant force hitting it from the deck side of the slat. The damage is commensurate with the slat having been kicked. The fact that the 1"x4" slat cracked instead of the nails holding it giving way indicates to me that the slats are securely anchored and not retained by flimsy "penny nails" as alleged by the tenant. Given this finding, the dislodging of the two other slats are likely tenant caused as well.

I direct that the landlord attend within 30 days to hire the services of a carpenter licenced to carry on that trade and have the balcony inspected and determined to be safe and habitable. The landlord is not responsible for the repair of the three slats shown as damaged in the landlord's photos. The tenant is responsible for having that damage repaired. If the deck is found to be deficient by the carpenter then I direct that the landlord hire that or another licensed carpenter to complete the necessary repairs within 30 days after that.

In the meantime, the evidence does not persuade me that the deck is unusable for its normal purposes by adult users or their pets.

Asbestos

The landlord converted a sauna into a rental unit. The work was done with the knowledge that asbestos was contained in drywall mud and tiles and appears to have been done by a qualified professional company. A certificate of occupancy has been issued and is, I find, a certification that the work was carried out properly. It is not clear what documentation the tenant seeks regarding the remediation. It was not shown what practical purpose any further documentation, if it existed, would serve. I therefore dismiss this item of the claim.

Ventilation Ducts

The order made in file 857005 reads:

By no later than June 30, 2017, the Landlord shall hire the services of a qualified air duct cleaning company to inspect and clean the ventilation system in the rental building.

Although was done late by a few days, I am satisfied that this order was complied with. I dismiss this item of the tenant's claim.

Metal Staircase

The order made in file 857005 reads:

I am unable, based on the evidence before me, to find that the product used by the Landlord is inappropriate. Should the adhesive prove insufficient (such as the bannister detaches again) and the bannister require further repair, the Landlord is directed to hire a professional welder to attend to the repair.

The bannister has broken again; not just at the landing but at three or four of the metal posts. While I am concerned that, given the willful damage to the balcony slats the damage in the tenant's photos may also be willful damage, that has not been proved.

I direct that within 30 days the landlord retain a qualified repairman, licenced to perform such work, to weld or otherwise anneal the stair railing in a safe and secure manner.

Front Steps

The tenant has failed to show that the stairway is not in compliance with safety standards applicable to this building. Nor has it been shown that the landlord's practice of salting slippery areas is below standard. It is inevitable that on occasion there will be slippery areas following a snow event and until the landlord, in the normal course of thing,s attends to them. I dismiss this item of the claim.

Parking Lot

This complaint was raised in the previous hearing and was dismissed. The tenant now argues that the landlord's representative misled and lied to the arbitrator at that hearing. Mr. McK. says the landlord does not clean the lot in the summer and that it is a fire hazard.

In the case of a decision obtained by the fraud of lying, a party's remedy is to apply for review and rehearing under Division 2 of the *Residential Tenancy Act*.

In any event, no such conduct was proved at this hearing nor was it shown on the evidence that the parking lot was somehow a fire hazard in the summer. That is Mr. McK.'s opinion and he is entitled to it. To form the basis for a compliance order, the cogent and convincing evidence required was not provided here. I dismiss this item of the claim.

Bathtub Caulking

As noted in the above order issued in the previous arbitration, the landlord was ordered to hire a qualified carpenter to caulk the bathtub area. It has not. The landlord had its employee do it. He may be a handy man but he did not demonstrate that he was a qualified carpenter.

Given the finding that the tenant has caused wilful damage on the balcony and given the landlord's photos showing what appears to be a reasonable caulking job, I am not persuaded that the recent caulking done by Mr. B. has peeled away as the result of normal use or was otherwise inadequate. I dismiss this item of the claim.

Evacuation Plan and Fire Safety

The evidence about this item is contradictory. The tenant's representative says an evacuation plan and fire safety contacts have not been posted. Mr. B. for the landlord says they have. I am unable to reach any conclusion based on this conflicting evidence and so must find that the tenant has not proved this item on a balance of probabilities. I therefore must decline to make any order about this important matter.

I note that the local fire department has or is investigating the matter and would suggest that avenue be pursued in the event of non-compliance. I dismiss this item of the claim.

Security Lighting

This item appears to be in addition to the tenant's claim for repair of the exterior lighting around the building; a claim that was dismissed in the earlier arbitration.

Mr. McK. for the tenant says there are no exterior lights over the entrances to the building and that such lighting is a security and safety requirement. The landlord's representative indicates there are security lights and even a security camera. Mr. McK. says this is a lie. On the evidence before me I am unable to determine who is right or wrong on this issue. I must therefore dismiss this item of the claim as not proved.

Mould on First Floor

This claim has not been proved. The limited evidence of a dark hole does not prove the existence of mould as alleged. In any event, the hole has been repaired. I dismiss this item of the claim.

Weekly Cleaning Schedule

The tenant seeks an order that the landlord post a weekly cleaning schedule. Mr. McK. argues that there is dust and lint on the carpets, dirty windows and glass and bugs in the light fixtures. The landlord's representative made no responsive answer to this claim.

I am satisfied that the landlord is not attending to the general upkeep of the interior common areas of the apartment building. There is no particular cleaning schedule set by law or set otherwise, however, one would think that interior flooring; the hallways and lobby areas would be cleaned every seven to ten days or earlier if required and that, generally speaking, walls and windows would be attended to on at least a biannual basis.

In this case I make no order requiring the landlord to carry out any particular cleaning but, in the circumstance, I think it fair that the tenant be informed about the landlord's cleaning regime. That way, after a period of time it can be determined whether the schedule is an appropriate one or not and at the same time, it will prompt the landlord into keeping that schedule.

I therefore direct that within ten days after the date of this order the landlord post and maintain in the lobby or foyer of the building a schedule of routine cleaning and maintenance, to include, carpet vacuuming and carpet cleaning and other general cleaning to the interior and exterior of the building (for example; external window washing).

Monetary Claim

In the circumstances of this case I am not satisfied that the tenant has lost the use of her balcony so as to justify a monetary award. Neither is there any item in the portion of the tenant's claim that has been accepted in this arbitration that in my view would warrant compensation. I therefore dismiss this item of the claim.

Conclusion

I direct that the landlord attend within 30 days to hire the services of a carpenter licenced to carry on that trade and have the balcony inspected and determined to be safe and habitable. The landlord is not responsible for the repair of the three slats shown as damaged in the landlord's photos. The tenant is responsible for having that damage repaired. If the deck is found to be deficient by the carpenter then I direct that the landlord hire that or another licensed carpenter to complete the necessary repairs within 30 days after that.

I direct that within 30 days the landlord retain a qualified repairman, licenced to perform such work, to weld or otherwise anneal the stair railing in a safe and secure manner.

I direct that within ten days after the date of this order the landlord post and maintain in the lobby or foyer of the building a schedule of routine cleaning and maintenance, to include, carpet vacuuming and carpet cleaning and other general cleaning to the interior and exterior of the building (for example; external window washing).

The remainder of the tenant's claim is dismissed.

As the tenant has been only partially successful and as I have found wilful damage on her part I award her recovery of \$50.00 of the filing fee. I authorize her to reduce her next rent by \$50.00 in full satisfaction of this award.

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: February 23, 2018

Residential Tenancy Branch