



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR OLC

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

JT, IT, and JC appeared on behalf of the landlord in this hearing. The tenant attended with her advocate LH. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As the tenant confirmed receipt of the landlord's evidentiary materials, I find the tenant duly served with the landlord's evidence in accordance with section 88 of the *Act*.

Preliminary Issue – Tenant's Late Evidence

The landlord confirmed receipt of the tenant's evidence, but noted that some of the evidence was submitted outside of the timeline prescribed by RTB Rules of Procedure. The landlord confirmed that they did have the opportunity to review this evidence.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case the landlord did have the opportunity to review the late evidence submitted by the tenant. I find the admission of this evidence would not be prejudicial to the respondent. As the tenant's evidentiary materials were acknowledged as received by the landlord, and as the landlord confirmed that they had the opportunity to review these materials which were served in accordance with section 88 of the *Act*, I will allow the admittance of the tenant's evidence.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 22, 2017, with monthly rent currently set at \$1,113.00. The tenant paid a security deposit in the amount of \$522.50, which the landlord still holds.

The tenant is seeking a 60% rent reduction for the landlord's failure to address the tenant's concerns about noise. In addition to the rent reduction, the tenant is also requesting that the landlord address the tenant's loss of quiet enjoyment.

Item	Amount
60% rent reduction for 2017 (rent: \$1,045.00)	\$5,643.00
60% rent reduction for 2018 (rent: \$1,086.00)	7,819.00

60% rent reduction for 2019 (\$1,113.00)	8,013.00
Total Monetary Order Requested	\$21,475.00

The tenant testified that a neighbouring tenant refurbishes furniture inside their unit, which usually takes place late at night to evade being seen by others. The tenant testified that the tenant is conducting business inside their rental unit, and as a result the tenant has lost sleep due to the constant noise.

The tenant's advocate stated that the tenant first noticed the noise in March of 2017 when she had first moved in, and the noise has been ongoing throughout this tenancy. The tenant notes that the noise would take place at random times, and despite the tenant's complaints, the tenant has experienced no reduction in the level of noise.

The tenant testified that the landlord wrote one letter in 2018, which was ignored by the tenant, and the noise continued. The tenant feels that the landlord has neglected their duty to ensure the tenant's quiet enjoyment. The tenant testified that the landlord had instructed them to gather more evidence, which resulted in an altercation between the applicant's son and another tenant. The tenant testified that the incident was serious enough to warrant the attendance of police, although no charges were laid.

The landlord had served the offending tenant a 1 Month Notice to End Tenancy, which was cancelled by the Arbitrator. The tenant feels that the landlord failed to take the necessary steps to gather and provide sufficient evidence, which resulted in the cancellation of the 1 Month Notice, and continuation of that tenancy.

The landlord responded that despite the tenant's testimony of the ongoing noise since she first moved in, the landlord did not receive any complaints the first year. The landlord testified that after following up and investigating the tenant's noise complaints, the landlord discovered that no other tenants were complaining about the noise despite the fact that this was a multi-dwelling complex with many adjoining units. The landlord testified that they had responded to the tenant's complaints, and had even issued a Notice to End Tenancy. The landlord testified that the 1 Month Notice was cancelled, not due to their lack of effort, but because there were insufficient grounds to end the tenancy. The landlord testified that they had tried to assist the tenant by offering the tenant a different rental unit, which the tenant declined. The landlord submitted letters from other tenants in their evidence who were frustrated by the harassment and actions of the applicant and her son. The landlord feels that they have always fulfilled their obligations as a landlord, and furthermore the tenant has not justified the 60% rent reduction requested.

The tenant confirmed that she had been offered a different rental unit, but that the unit offered to her was smaller and unkempt. The tenant feels that the offer was made by the landlord in an effort to bully the tenant into moving out, and not to help her. The tenant submits that instead of fulfilling their obligations as a landlord, the landlord simply dismissed the tenant, and continues to do so.

Analysis

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

I have considered the testimony and evidence of both parties. Although I do not doubt the level of frustration the tenant has faced during this tenancy, I find that the landlord has provided several detailed examples of how they had taken many steps to address the tenant's complaints within their scope as landlords such as issuing letters and notices to end tenancy. I note that the test is high when a tenant dispute a 1 Month Notice issued by a landlord, and the landlord's failure to obtain an Order of Possession after a hearing is not indicative of their failure to investigate or failure to fulfill their obligations as landlords. The issuing party carries the burden of proof, and the determination of insufficient evidence does not automatically mean the issuing party failed in their obligations as landlords. I find the issuance of a 1 Month Notice to be significant, and supports the landlord's willingness to ensure compliance with the *Act* and tenancy agreement. Once issued, the tenant has the right to dispute the 1 Month Notice, which can be cancelled despite the landlord's efforts or intentions.

Despite the reasons given by the tenant for declining the offer to move, I find the landlord did provide the tenant with the option to do so. I have acknowledged the tenant's concerns about the rental unit, but I am not satisfied that the tenant had provided sufficient evidence to support that the rental unit was offered in an effort to bully the tenant out. I find the landlord's evidence to be compelling, specifically the fact that no other tenants have complained about the same noise, despite the level, frequency and duration of the noise described by the tenant, and despite the fact that this is a multi-dwelling complex with other residents. The landlord provided letters from other tenants expressing their frustration with the tenant and her son, and their own loss of quiet enjoyment.

Based on the evidence before me, I find that the landlord has fulfilled their obligations as required by the *Act*. I am not satisfied that the tenant has established that they had

mitigated the landlord's exposure to the losses claimed, as is required by section 7(2) of the *Act*. It was undisputed that the tenant had declined the landlord's offer to move to a different rental unit. Despite the tenant's explanation for declining, I find that tenant had failed to support that the offer was given with the intention of bullying the tenant and her son out. In light of the fact that this is a multi-dwelling complex, I find that the landlord has attempted to mediate and address the numerous concerns brought up by the applicants and other tenants.

Although I find that the tenant's expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the landlord had failed to meet their obligations regarding this matter. I find that the landlord had complied with the *Act*, and has adequately addressed the tenant's concerns as allowed by the *Act*. On this basis, I am dismissing the tenant's request for the refund of rent without leave to reapply.

Similarly, I am not satisfied that the landlord had contravened the *Act*, or tenancy agreement, and I dismiss the tenant's application for an order for the landlord to comply with the *Act*, or tenancy agreement without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee.

Conclusion

I dismiss the tenant's entire 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: February 6, 2020

Residential Tenancy Branch