



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT OLC RP RR

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

JT ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

Issues to be Decided

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

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

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 tenancy began on June 1, 2019, with monthly rent currently set at \$1,500.00, payable on the first of every month. The landlord collected a security deposit and pet damage deposit in the amount of \$750.00 each deposit, which the landlord still holds.

The tenant is requesting an order that the landlord deal with issues that are affecting her enjoyment of her rental unit. The tenant also requested a rent reduction in the amount of \$500.00. The tenant testified that she has been subjected to constant noise and smoke from the surrounding rental units in the 27 unit apartment building. The tenant has requested that the landlord address these issues, and the issues remain outstanding. The tenant testified that due to noise from the unit that shares her bedroom wall, she has had to resort to sleeping in her living room. The tenant testified that the tenants above her are also unreasonably loud, including in the middle of the night.

The landlord's agent testified in this hearing that the landlord has attempted to address the outstanding issues with the surrounding tenants by speaking to the tenants, but that the tenants have denied smoking or causing excessive noise. The landlord testified at the hearing that she "noticed, too", and that the landlord has put up no smoking signs as this is a non-smoking building. The landlord testified that they have issued one written warning to the tenant's adjacent unit, but the tenant did not respond.

The landlord's agent testified that this is a multi-unit building and that they have done as much as possible to address the tenant's concerns. The landlord testified that the tenant was given the option to move to another vacant rental unit, which was turned down by the tenant as she did not consider it comparable.

The tenant is also asking that the landlord fulfill a previous agreement to install a screen door. The landlord responded that the screen doors have been installed in some rental units, but were not included as part of the tenancy agreement. The landlord testified that although they did inform the tenant that they would look into installing one, the landlord testified that due to the current financial circumstances that they are unable to complete this installation at this current time.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property 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.

I have considered the testimony of both parties, and I am not satisfied that the screen door is an included amenity included in the tenancy agreement, nor do I find that this qualifies as a repair under section 32 of the *Act* as stated above. Although the landlord may have considered the installation of a screen door in the tenant's rental unit during this tenancy, I find that the landlord provided a reasonable explanation for why this has not been fulfilled. For this reason, I dismiss the tenant's application for the installation of a screen door without leave to reapply.

Section 28 of the *Act* addresses the right to the tenant's right to quiet enjoyment.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Although I acknowledge the fact that the landlord has made some efforts to address the tenant's concerns, I find that the landlord has failed to follow up with the landlord's verbal warnings to the offending units. Although the landlord referenced one written warning, the landlord did not provide a copy of this warning as part of their evidentiary materials. Although I understand that the landlord has a duty to balance their obligations to all their tenants in this multi-unit apartment building, I find that the landlord has failed to properly address the tenant's concerns about the excessive noise and smoking. Accordingly, I make the following orders:

- 1) I order that the landlord issue formal written warnings to the offending units about smoking in the building, and the disturbance caused to the tenant and surrounding units.
- 2) I order that the landlord issue formal written warnings to the offending units about excessive noise in the building, and the disturbance caused to the tenant and surrounding units.
- 3) I order that the landlord issue the above warnings within 5 days of receiving this decision, and confirm with the tenant that these warnings have been issued.
- 4) I order that the landlord follow up with these warnings if necessary.

The tenant also applied for a rent reduction in the amount of \$500.00. 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."

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Although I sympathize with the tenant and the issues she has dealt with in this tenancy, I find that the tenant has failed to provide sufficient evidence to support the value of the loss applied for. I find that the landlord has made some effort to address the tenant's concerns, including the offer of another vacant rental unit. On this basis, I am dismissing the tenant's application for a rent without leave to reapply.

I allow the tenant the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

I dismiss the tenant's application for a rent reduction and installation of a screen door without leave to reapply.

I order that the landlord issue formal written warnings to the offending units about smoking in the building, and the disturbance caused to the tenant and surrounding units.

I order that the landlord issue formal written warnings to the offending units about excessive noise in the building, and the disturbance caused to the tenant and surrounding units.

I order that the landlord issue the above warnings within 5 days of receiving this decision, and confirm with the tenant that these warnings have been issued.

I order that the landlord follow up with these warnings if necessary.

I allow the tenant to recover the filing fee. The tenant may implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 18, 2020

Residential Tenancy Branch