



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Housing and Health Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, AAT, RR

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order requiring the landlord to make repairs to the rental unit for health or safety reasons;
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests; and
- a reduction in monthly rent.

The tenant, his advocate, and the landlord's agents (landlords) attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The parties were then affirmed.

The parties confirmed receiving the other's evidence.

Thereafter, the parties were provided the opportunity to present their evidence orally and to refer to and present their relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the orders he has applied for and a reduction in monthly rent?

Background and Evidence

The evidence shows this tenancy began on or about August 20, 2019. The undisputed evidence was that the tenant paid the “Rent Geared to Income” rate, instead of the economic, or market, rate, and his subsidized monthly rent currently is \$375.

The residential property houses tenants who were formerly homeless or have few housing options. I also heard testimony that the residential property is a 7 year old, 12 story building. The tenant’s rental unit is on the 10th floor.

At the beginning of the hearing on the merits of the tenant’s application, I asked the tenant what his most urgent concerns were. The tenant began by saying that the landlord had restricted access to his rental unit, including deliveries to his door for medications. The tenant said that the landlord prevented his cleaner’s access to his rental unit. The tenant said that this occurred when the Covid-19 pandemic began, but these restrictions have now been lifted, suggesting that this issue was no longer a concern.

In support of his other issues, the tenant provided the following testimony, in response to his advocate’s questions:

An order for landlord’s compliance with the Act, regulations, or tenancy agreement –

The tenant testified that he has a great many health issues, which has reduced his life expectancy to three or four years. The tenant submitted that his health has been seriously impacted by the noises coming from the rental units directly above and in an adjacent unit to the one above his unit. The tenant described the noises as stomping, banging, and hammering. The tenant submitted that the above tenants refuse to put sleeves on their chair legs and are constantly scraping the chairs across the floor.

The tenant testified that one of these tenants bounces a ball against the walls for hours on end.

The tenant testified that he has talked to these tenants, as suggested by the landlord, but the noise level following those conversations increased. The tenant said that the noises are all night long, particularly from 2 to 3 a.m.

The tenant submitted copies of the written complaints to the landlord.

As to the smoking issue, the tenant submitted that the two tenants on either side of him smoke, and their cigarette and other smoke pour into his rental unit from their washroom. The tenant submitted that his bathroom is saturated with smoke, which exacerbates his chronic bronchitis, COPD, and allergies. The tenant submitted that the smoke increased his coughing, and he is then told to “shut up” by other tenants. The tenant said that talking to the offending tenants only worsens the situation.

The tenant said these situations have created a loss of quiet enjoyment.

Filed into evidence were copies of the complaints.

Landlord's response –

The landlord's agent, JW, said that when they receive a noise complaint, such as in the case of the tenant here, they send a letter to the other tenants in an attempt to resolve the matter. The landlord said that they urge all their tenants to call the police department or contact their on-site staff, which are there on a 24 hour basis, when these issues arise. There are also support workers available.

The landlord submitted that the tenant was provided a follow-up to the complaints and that a number of resources have been deployed.

As to the smoking issue, the landlord said that the building was a LEEDS building and fresh air is constantly being circulated in the building. The landlord confirmed that smoking was allowed by tenants in this building, but they have encouraged tenants to keep their windows open and fans going.

Order requiring the landlord to make repairs to the rental unit –

In support of this request, the tenant said he was promised blind replacements at the start of the tenancy on August 19, 2019, as shown on the move-in condition inspection report (CIR) and the landlord has yet to replace them. The tenant said that the blinds

do not close completely, leaving a 6" gap. In addition, the blinds only open $\frac{3}{4}$'s of the way.

In addition, the tenant said that the cupboard doors have been replaced, but that the handles were full of "crud". The tenant said he was afraid to clean them, for fear of damaging the handles.

The tenant confirmed that the stove and refrigerator were replaced, but that there continues to be a white dust-like buildup over surfaces. The tenant said that in addition, the bathtub, sink and back splash have a floor wax type substance over them and the landlord has not properly addressed this matter. The tenant said that through cleaning, chips in the surfaces continue to appear, but that he can live with that as long as the surfaces are cleaned.

Landlord's response –

The landlord referred to their shift reports to point out a lot of repairs the tenant has requested have been made since the tenancy began, such as those dealing with light switch covers, wall plugs, heating, cupboard door replacements, wax removal from the bathtub and backsplash.

The landlord said that the tenant's blinds are on order and will be installed when a contractor is available to do the work. The landlord said the pandemic has slowed down their ability to deal with all issues.

An order requiring the landlord to allow access to the rental unit –

The tenant said that his health was impacted when the landlord began denying access to his rental unit. The tenant also said that the landlord did not apply the rules consistently; however, the tenant said the landlord seemed to be complying currently with allowing access.

Reduction in monthly rent –

The tenant submitted that he is entitled to a reduction in his monthly rent, until the landlord completes the repairs and satisfactorily addresses the noise and smoking issues.

The tenant also claimed that he is entitled to a reduction in monthly rent as his cleaner was denied access to his rental unit, as well as the delivery for food and medicine. The tenant claimed \$100, citing that his monthly rent was \$375.

Landlord's response –

The landlord submitted that they operate a non-profit social housing building and that the tenant's rent is subsidized.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

An order for landlord's compliance with the Act, regulations, or tenancy agreement –

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

I am mindful of the fact the tenant's rental unit is in a multi-story, multi-unit building and sounds from other occupants will be audible to others. In this case, I have considered that the tenant has made written requests to the landlord about the loud noises in the rental units above him.

I find the tenant provided compelling, consistent, and forthright evidence regarding the noise issues and that the noises have continued. I find the landlord did not provide sufficient evidence that they have satisfactorily addressed this issue. I do not find it the tenant's responsibility to take on these issues with other tenants and I also do not find a reasonable response from the landlord is to suggest they call the police department.

Overall, I find the landlord has not shown that they responded appropriately to the tenant's concerns or that they took reasonable steps to address the tenant's concerns in order to protect his rights to quiet enjoyment of the rental unit.

Section 62(3) of the Act provides that: “The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

Accordingly, I hereby order that the landlord comply with section 28 of the Act with regards to ensuring the tenant has quiet enjoyment of his rental unit, with regard to the excessive noises to which he has complained. I order this as I have found the landlord has not sufficiently addressed the tenant’s complaints about excessive noises, instead relying on the tenant to seek a solution.

As to the issues around the tenant’s complaints about other tenants’ smoke entering his rental unit, I find that unfortunately for the tenant living in a building where smoking is allowed will most likely result in him smelling smoke.

The landlord said that the building was modern and built with fresh air returns. I am not sure what the landlord can do about other tenants legally entitled to smoke in their rental units.

I therefore, in the case of the tenant’s smoking complaint, do not find sufficient evidence that the landlord has breached the tenant’s right to quiet enjoyment. In turn, I do not order the landlord to comply with section 28 of the Act as to the tenant’s smoking complaints.

Order requiring the landlord to make repairs to the rental unit –

Section 32(1) of the Act requires a landlord to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I have reviewed the condition inspection report (CIR), which shows that the landlord was to repair the blind at the start of the tenancy, and the undisputed evidence is that they have failed to do so, over 10 months into the tenancy.

While the landlord has said they blinds are on order, it was not clear when this repair will be made.

As to the waxy build-up on the backsplash, although the landlord's evidence shows that they have cleaned that part of the rental unit, I find the tenant provided consistent and compelling evidence that the dust keeps returning despite the efforts of the landlord.

I also find the tenant submitted sufficient evidence that the handles on the replaced cabinet doors were not cleaned prior to installation.

I therefore order the landlord to immediately replace the blinds, to investigate and resolve the matter of a dust build-up from the waxy surfaces and to clean the cabinet door handles.

As to the other repair requests made by the tenant, it appears that these issues have been addressed.

An order requiring the landlord to allow access to the rental unit –

As the testimony demonstrated this matter is no longer a concern of the tenant, I decline the tenant's request for this order.

Reduction in monthly rent –

As I have found that the landlord has not protected the tenant's right to quiet enjoyment due to their insufficient response to the tenant's complaints about excessive noise and has not made the necessary repairs to the blinds, despite the tenancy beginning on August 20, 2019, I further find that the insufficient response and their failure to make the necessary repairs have caused a diminished value of the tenancy for the tenant.

Residential Tenancy Branch Policy Guideline 6 states: "*in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed*".

I find it reasonable under the circumstances and I therefore order that the tenant's monthly rent be reduced by \$50 per month, effective immediately. The tenant is directed to withhold the amount of \$50 from the August rent payment.

To clarify the amount, I assess a diminished value of \$25 per month for the failure to replace the blind and \$25 per month for the landlord's failure to sufficiently address the tenant's noise complaints.

I further authorize the tenant to reduce future monthly rent by \$25 until such time as the landlord has replaced of the blinds, removed the waxy residue, and cleaned the cabinet door handles.

I further authorize the tenant to reduce future monthly rent by \$25 until such time as the landlord has fully investigated and ensured the tenant's rights to quiet enjoyment have been protected.

If the landlord has replaced the blinds and satisfactorily cleaned the rental unit by the end of July 2020, the tenant must not deduct the approved amount of \$25 from the monthly rent for August 2020.

If the landlord has fully investigated and resolved the matters of the noise from the other tenants by the end of July 2020, the tenant must not deduct the approved amount of \$25 from the monthly rent for August 2020.

Additionally, the evidence shows that the landlord obligated themselves to replace the blinds at the beginning of the tenancy on August 20, 2019, and have not done so. Further, the tenant's documentary evidence shows that the tenant first issued a written complaint to the landlord in April 2020, and the matter has not been resolved.

I find the diminished value of the tenancy should be granted retroactively for \$25 per month from August 2019, through June 2020, or a total of \$275, due to the landlord's lack of making the necessary repairs to the blinds.

As the matter of the noise complaints have remained unresolved since April 2020, I find the diminished value of the tenancy for this matter should be granted retroactively for \$25 per month from April through June 2020, or a total of \$75.

I therefore order the landlord to compensate the tenant in the amount of \$350 and that this amount may be deducted from the reduced rate of rent as described below.

If the tenant withholds \$50 from the August monthly rent, the remaining amount owed would be \$325. To give effect to his monetary award, the tenant is directed to withhold the remaining amount in partial satisfaction. Then the month following, the remaining

\$25 from his monetary award of \$350 may be deducted from the September 2020, monthly rent in addition to the authorized deductions.

If the tenant is not satisfied with the repairs being made or if the noise complaints have not been sufficiently addressed and resolved, and he continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that they have complied with this Decision in order to have the monthly rent restored.

If for some reason the tenancy ends before August 1, 2020, I grant the tenant a monetary order in the amount of his monetary award, or \$350, pursuant to section 67 of the Act.

If the tenant redeems his monetary award through a rent reduction, the monetary order is of no force or effect.

Conclusion

The tenant's application for an order requiring the landlord to make repairs and to comply with the Act has been granted.

The tenant's application for a reduction in his monthly rent has been granted.

The tenant has been granted a retroactive rent reduction as described above.

The tenant has been granted a monetary award to reflect the diminished value of this tenancy, as described above.

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: July 2, 2020

Residential Tenancy Branch