



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, OLC, FFT

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 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 landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Although the landlord testified that he was not served with the tenant's notice of hearing, he was able to obtain the information required to attend the scheduled hearing. The landlord testified that he was ready and willing to proceed with the scheduled hearing. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*, and the hearing proceeding as scheduled.

Issues

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

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 month-to-month tenancy began on December 1, 2017, with monthly rent currently set at \$2,050.00, payable on the first of every month. The landlord collected a security and pet damage deposit in the amounts of \$1,000.00 each deposit.

The tenant is seeking a twenty-five percent rent reduction equivalent to \$3,000.00 for the landlord's failure to address her complaints about noise from the tenant above her. The tenant is also seeking an order for the landlord to fulfill their obligations under the *Act* by addressing her concerns.

The tenant testified that she has been complaining for over 7 months about the noise originating from the noise above her, without any resolution to the matter. The tenant testified that she would hear a constant knocking noise, which took place all day and night, and sounded like a "high heel" on hardwood flooring. The tenant testified that the landlord had responded to her that they had talked to the tenant, and offered to attend her unit to observe the noise, but as the visit was too short in length the parties were unable to record anything. The tenant testified that despite being reassured by the landlord, the noise continued and was driving her crazy and affected her sleep. The tenant testified that she did not hear back until mid-March when the landlord informed her that the origin of the noise was from orthopedic shoes worn by the tenant upstairs.

The tenant testified that she waited until mid-May due to the restrictions set during the state of emergency, and inquired with the landlord whether the tenant upstairs has addressed her complaints. The tenant confirmed in the hearing that the landlord had given her the option to relocate to a different unit, but the tenant was concerned about having to pay additional rent or moving costs, or losing amenities such as the deck.

The landlord testified that they take noise complaints seriously, and that they did their best to fulfill their obligations in dealing with the matter. The landlord testified that all tenants are aware that the apartment is a wood framed building containing 66 rental units. The landlord testified that they had personally attended the tenant's rental unit in order to assess the noise, and followed up by providing the upstairs tenant with furniture

pads. Upon investigation, the landlord discovered that the upstairs tenant had undergone foot surgery, and had to wear specialized footwear. The landlord testified that they had offered to purchase slippers for the upstairs tenant, which was declined. The landlord testified that they did not have the authority to force the tenant to change her footwear, and that this applicant was the only tenant complaining of this issue. The landlord testified that they did offer an alternate unit to the tenant, but this unit did not have a patio. The landlord confirmed that currently there are no other vacant units available that meet the tenant's requirements. The landlord testified that they were sympathetic to the tenant, but have exhausted all reasonable options.

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."

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant's application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

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.

I have considered the testimony and evidentiary materials submitted by both parties. I accept the evidence of the tenant that she has suffered a disturbance during this tenancy. The onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffered a loss in the amount claimed.

The tenant provided detailed evidence documenting how she has been disturbed by the actions of another other tenant in this multi-dwelling building. The landlord disputes the tenant's application for a rent reduction, stating that they have fulfilled their obligations

in dealing with this matter. Although the tenant is unsatisfied with the outcome, I find that the landlord had provided sufficient evidence to support that they have exhausted their options in dealing with this matter. Furthermore, although the tenant considers the noise to be excessive and distressing in nature, the tenant declined the landlord's offer to re-locate to a different rental unit. Although I sympathize with the tenant's concerns about moving to a different rental unit, I find that the landlord had made a genuine effort to accommodate the tenant and address her concerns. I find that upon investigation, the landlord had discovered that the noise was due to a medical issue, and not the intentional disregard or malice of the other tenant.

Although I accept that the landlord has a duty to address complaints from tenant, the landlord has a duty to balance their obligations to all their tenants. Although the tenant testified that the landlord has failed to properly investigate or deal with her complaints, I find that the tenant's beliefs are not sufficiently supported in evidence. I find that the landlord had taken multiple steps to address the issue, and as this is a multi-tenanted, wood-framed building, with multiple occupants, I find that the level of quiet enjoyment is impacted by the nature of the living space and construction of the home. Although I am sympathetic towards the tenant's situation, I find that the evidence does not support that the landlord had failed in their obligations in dealing with this matter. Accordingly, I dismiss the tenant's application for a rent reduction without leave to reapply.

The tenant also requested an order for the landlord to deal with the tenant's concerns about her quiet enjoyment. As stated above, I am satisfied that the landlord has shown a willingness to fulfill their obligations in relation to the tenant's right to quiet enjoyment. As stated earlier, the landlord has an obligation to balance their obligations to all tenants, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed in this regard. I find that the landlord has sufficiently addressed the tenant's concerns during this tenancy to the extent of their obligations under the *Act* and tenancy agreement. I am not satisfied that any orders are necessary or justified at this time. For this reason, I dismiss this portion of the tenant's application without leave to reapply.

As the tenant was not successful with his application, the tenant's application for recovery of the filing fee is dismissed without leave to reapply.

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: July 7, 2020

Residential Tenancy Branch