



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAMMON INTERNATIONAL REAL ESTATE
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

On September 19, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. The Tenant and the Landlord’s agent (“the Landlord”) appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant’s application listed the dispute address as the address for service of documents. The Landlord testified that they served a copy of the Landlord’s documentary evidence using registered mail sent on November 2, 2020 to the dispute address.

The Tenant testified that she has not received the Landlord’s documentary evidence. She testified that she has all of her mail sent to a different mailing address. During the hearing the Tenant checked her mailbox at the dispute address and confirmed that she had received the registered mail notifications.

I find that the Tenant provided the dispute address to the Landlord for service of documents. In accordance with sections 89 and 90 of the Act, I find that the Tenant is deemed to have received the registered mail on the fifth day after it was mailed.

The Landlord's evidence was accepted into evidence and will be considered.

Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation, or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on April 1, 2020 as a one-year fixed term tenancy that may continue thereafter on a month to month basis. Rent in the amount of \$1,200.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00. A copy of the tenancy agreement was provided by both parties.

The Tenant testified that she has a chemical sensitivity and that the occupant living next to her is using a chemical cleaning product every couple of days that is making her ill. She testified that her neighbor is using an over the counter aerosol cleaning product that sometimes travels into her unit through adjacent windows. The Tenant testified that the cleaning product contains dangerous carcinogens and may cause cancer and respiratory issues.

The Tenant testified that on June 12, 2020 she contacted her neighbor and informed her about her sensitivity. The Tenant testified that on July 20, 2020, she contacted the Landlord and made the Landlord aware of her chemical sensitivity and the concern she has with her neighbors use of a cleaning product.

The Tenant testified that upon request she provided the Landlord with a medical note from her doctor regarding her sensitivity and she provided the Landlord a list of three "green" cleaning products that her neighbor could use. She testified that the Landlord informed her they would take some action.

The Tenant testified that she provided some "green" cleaning products to her neighbor; however, her neighbor was not receptive to this and called her a crazy lady and swore at her.

The Tenant stated that the Landlord sent an email to her neighbor on August 26, 2020 asking them to use a different product. The Tenant stated that her neighbor has not stopped using the cleaning product and the Landlord has not taken any further action on this matter.

The Tenant testified that she followed up with her neighbor approximately two weeks after July 20, 2020 because her neighbor was still using the cleaning product.

The Tenant stated that she is not aware if her tenancy agreement restricts the use of any cleaning products.

The Tenant submitted that the Landlord now considers her to be a problem Tenant. She stated that she may be open to moving to another unit in the residential property, but she is not interested in ending the tenancy.

In response to the Tenant's testimony, the Landlord testified that the residential property has many other occupants. She testified that the tenancy agreement with the Tenant's neighbor does not contain a term or condition restricting their use of cleaning agents.

The Landlord testified that she feels for the Tenant and her difficulties with her sensitivity and that she did follow up with the Tenant's neighbor. She testified that the neighbor reports they discontinued using the cleaning product on July 27, 2020. She stated that the Tenant's neighbor has been very cooperative with the Landlord.

The Landlord stated that she informed the Tenant that her neighbor stopped using the cleaning product. She stated that the Tenant approached her neighbor again, which has now resulted in a disturbance complaint from the neighbor against the Tenant.

The Landlord submitted that she cannot force other occupants living on the residential property to use specific products or force them to close their windows and other such restrictions without affecting their rights to quiet enjoyment of the property.

The Landlord stated that she does not feel that the Tenant's neighbor is breaching the Act, or tenancy regulation. The Tenant was informed that there is nothing more the Landlord can do for her.

The Landlord stated that rental units rarely come available, but they are open to discussing a move to another rental unit.

In reply, the Tenant stated that the Landlord could not know when the cleaning product is being used and she feels the Landlord should come to her unit and investigate further when she reports that the cleaner is being used.

Analysis

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I note that the Tenant approached the other occupant and asked the occupant to use a different product and the occupant initially declined. My authority is to resolve disputes between Landlords and Tenants; not Tenant vs Tenant disputes. The issue for me to determine is whether or not the Landlord has failed their obligation to protect the Tenant's right to quiet enjoyment.

I accept the Tenant's medical note dated August 13, 2020 that she reported to the Doctor that she has issues with reactions to fragrances and chemicals.

With respect to loss of quiet enjoyment, I have considered whether or not other tenants use of readily available cleaning product within their own rental unit could amount to substantial interference with the ordinary and lawful enjoyment of the Tenant's enjoyment of the premises. I find that there was no suggestion that the other occupant

is using the cleaning product with an intention to interfere with the Tenant's enjoyment of the property.

I find that this situation is similar to a situation where a Tenant lives in a multi unit residential building and is sensitive to noise coming from other occupants, or their children. I find that it is normal to expect that in a multi unit building there will be occasional noise from ordinary day to day living and that a Tenant electing to live in a multi unit building ought to expect occasional noise. With respect to cleaning products, I find that there was no guarantee from the Landlord that the Tenant would have use of the rental property free from chemical cleaners. While the Tenant may occasionally be affected by other occupants use of cleaning products, this is reasonable to expect.

With respect to the Tenant's chemical sensitivity, I note that there was no evidence presented that other tenants have complained about the use of the cleaning product. I accept the Landlord's testimony that there are no terms or conditions in the tenancy agreements restricting the use of any cleaning products.

I accept that the Tenant reported her concerns to the Landlord, and I accept that the Landlord responded to the Tenant's concern by speaking to the Tenant's neighbor and encouraged the use of alternate cleaning products. I find that the Landlord responded to the Tenant's reported concern.

After considering the totality of the evidence before me, I find that any disturbance to the Tenant from the cleaning product does not amount to an unreasonable disturbance. I find that the Landlord responded to the Tenant's concern and attempted to resolve the issue. I find that the Landlord has not breached the Act by failing to protect the Tenants right to quiet enjoyment.

The Tenant's application for an order that the Landlord comply with the Act, Regulation or tenancy agreement is not successful and is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was not successful with her application, the Tenant's request to recover the filing fee is denied.

Conclusion

The Tenant's application asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement is not successful and is dismissed.

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: November 18, 2020

Residential Tenancy Branch