



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTHVAN PROPERTY MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

On January 31, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing, and J.C. and A.C. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by registered mail on or around February 5, 2021 and J.C. confirmed that they received the Notice of Hearing package only. The Tenant also advised that she did not serve her late evidence to the Landlord. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package. However, with respect to the Tenant’s evidence, I am not satisfied that this was sufficiently served to the Landlord. As such, I have excluded this evidence and will not consider it when rendering this Decision.

J.C. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2019, that the subsidized rent was established currently at \$508.00 per month, and that it was due on the first day of each month. A security deposit of \$175.00 was also paid.

The Tenant advised that she first discovered a noise in September 2020 and she brought this to the attention of the site manager. She stated that the site manager came to investigate the problem, that the mechanical room was opened, and that nothing could be done about the noise. She stated that she received permission from the site manager to have her own technician investigate the cause of the noise. However, the site manager had her own technician attend the property on the same day and the Tenant's technician was not allowed to investigate the problem. The Tenant described the noise heard to be that of an engine that is constantly going and that it increases in severity periodically. She stated that the noise has decreased in volume since she made this Application. She advised that she attempted to record the noise but was unsuccessful. As well, she inquired into hiring a company to record the noise, but it was too expensive. She submitted that she has contacted other residents of the building but no one else has complained of any noise issues.

A.C. confirmed that the Tenant has complained of a noise issue many times and she has investigated these complaints each time, but no noise has ever been heard. She submitted that no other residents of the building have ever complained about any noise issues. She stated that an air makeup intake unit room is near the rental unit, but it is separated by a firewall. She confirmed that the Tenant was permitted to have her own technician attend the property to investigate; however, her technician coincidentally happened to be scheduled for the same day as the Landlord's technician. The Landlord's technician allowed the Tenant's technician to watch as regular service was completed; however, the Tenant's technician was not allowed to touch any of the equipment.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this situation. I will provide the following findings and reasons when rendering this Decision.

Section 28 of the *Act* states that the Tenant is entitled to quiet enjoyment, reasonable privacy, and freedom from unreasonable disturbance.

Section 32 of the *Act* requires that the Landlord provide and 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 a tenant."

Regarding the Tenant's claim for an Order to comply, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the Tenant's claim for a loss of quiet enjoyment, when reviewing the totality of the evidence before me, the consistent and undisputed evidence is that when the Tenant complained of a noise issue, an agent of the Landlord would investigate. However, I find that the Tenant has provided insufficient compelling or persuasive evidence to substantiate what the noise she is complaining about is exactly, if there is a noise how significant this noise is, or how frequently it occurs. As well, I do not find that the Landlord was negligent in addressing or investigating the nature of the Tenant's

complaints. Ultimately, I am not satisfied that the Tenant has provided sufficient evidence to corroborate this claim. As a result, I dismiss this Application in its entirety.

Conclusion

Based on the above, I dismiss the Tenant's 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: April 29, 2021

Residential Tenancy Branch