



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, OLC, MNDCT

Introduction

On March 25, 2021, the Tenant applied for dispute resolution seeking the following relief:

- for an order that the Landlord make repairs to the rental unit.
- for a rent reduction.
- for a monetary order for money owed or compensation for damage or loss.
- for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was scheduled for a teleconference hearing. The Tenant and The Landlord's agents were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

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 Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply.

I find that the most important matter to determine is whether or not the Landlord is required to make repairs to the rental unit and whether or not the Tenant is entitled to a

rent reduction. The Tenants claim for a monetary order for money owed or compensation for damage or loss is dismissed with leave to reapply.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to a rent reduction?

Background and Evidence

The parties testified that the tenancy began on September 1, 2018 and is on a month-to-month basis. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month.

Repairs

The Tenant provided testimony that when she occupied unit # 19, second-hand smoke coming from her neighbor coated her possessions and caused a smell/ odor. The Tenant stated that the smoke was from cigarette and drug use. The Tenant testified that her possessions were “off gassing”. The Tenant moved to another unit in the residential property, and she stated that her possessions were cleaned and have now “off-gassed”. The Tenant provided copies of police reports from January and February 2019 where she reported a chemical smell coming from the unit beside her.

The Tenant testified that she placed her possessions in the carport of unit #24 for two months and this has caused the concrete floor to absorb the odor. The Tenant submitted that the concrete floor needs to be cleaned using a special type of cleaner which she cannot purchase herself as it is not available to the general public.

The Tenant is requesting that the Landlord be ordered to clean the carport using this special type of cleaner.

In reply, the Landlord testified that the Tenant’s neighbor was not using meth /drugs. The Landlord stated that the RCMP and Ministry were involved and stated there was no drug involvement. The Landlord stated that they never had any concerns/ issues with the Tenant living next to unit #19.

The Landlord testified that they have already provided accommodation to the Tenant’s concerns. The Landlord stated that they transferred the Tenant’s neighbor to a new

complex because she was being harassed by the Tenant. The Landlord then transferred the Tenant to a freshly painted unit #24.

The Landlord testified that they arranged for a licensed company to attend rental unit #24 and inspect for off gassing. The Landlord had a contractor wash the carport using muriatic acid. The Landlord provided an invoice dated January 18, 2021 for the cost to have a restoration company scrub the carport using muriatic acid.

Rent Reduction

The Tenant is seeking a rent reduction in the amount of \$350.00 for her losses and inconvenience of dealing with off gassing. The Tenant testified that the amount of \$350.00 is to motivate the Landlord to help her. She stated that due to the odor issue, she had to move in January 2019.

In reply, the Landlord testified that they are not in agreement to pay compensation to the Tenant. The Landlord stated that they have taken steps above and beyond what is reasonable. The Landlord stated that the Tenant was moved to a newly renovated and newly painted unit. The Landlord stated that they did everything they could to alleviate the Tenant's concerns.

Analysis

Section 32 of the Act provides that 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.*

Section 65(1) of the Act provides, if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

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

With respect to the Tenant's allegation that her neighbor was smoking drugs, I have reviewed the redacted police reports and I find the Tenant reported someone was

getting high on Meth. The later police report indicates the Tenant complained numerous times about a chemical smell and police did not attend the scene as there was no police action to be taken. I find that the Tenant is making allegations against her neighbor and the police reports are not evidence that the allegations are true.

The Landlord refutes the Tenant's testimony that her neighbor was smoking cigarettes and drugs in the unit. It is the Tenant's application, and the Tenant bears the burden of proof. I find insufficient evidence from the Tenant that her neighbor was smoking in the rental unit located next to her causing a transfer of second hand smoke.

I find that the Landlord has been very reasonable in dealing with the Tenants concerns by moving the Tenant to a newly painted unit and by having the carport of the new unit chemically cleaned. I find that there is insufficient evidence from the Tenant that the Landlord failed or is failing to comply with section 32 of the Act.

The Tenant's request for a repair order for the Landlord to have the carport cleaned and cleaned using a special chemical is dismissed without leave to reply.

With respect to the Tenant's request for a rent reduction, I find that the allegation that a neighbor was smoking meth/ cigarettes in the rental unit is unproven. I find that the Tenant's need to move to a different unit was an accommodation by the Landlord and not due any breach of section 32 of the Act on the part of the Landlord. Since I find that the Landlord has not breached the Act, the Tenant's request for a rent reduction is dismissed without leave to reapply.

The Tenant's application for a repair order and rent reduction is dismissed in its entirety.

Conclusion

The Tenant's application for a repair order and rent reduction was not successful and is dismissed.

Since the Tenant's request for money owed or compensation for damage or loss was not heard, the Tenant is at liberty to reapply on this issue.

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 28, 2021