



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations, or tenancy agreement; and, to recover the filing fee paid for this application from the landlord.

The tenant appeared at the hearing and was affirmed. The landlord did not appear at the hearing despite leaving the teleconference call approximately 30 minutes.

Since the landlord did not appear for the hearing, I explored service of hearing documents upon the landlord. The tenant testified that she sent the proceeding documents to the landlord via email on March 11, 2021. The tenant provided images of the emails sent to the landlord that contained the proceeding documents. The tenant also testified that she took screenshots of the text message evidence she had uploaded and sent the screenshots to the landlord via email on March 11, 2021 as well. The tenant stated that the landlord has not provided her with a physical mailing address but he has provided her with an email address to use to send her rent via e-transfer.

Pursuant to section 89(1)(f) of the Act and section 43(2) of the Residential Tenancy Regulations, an Application for Dispute Resolution and other required proceeding documents may be served upon the respondent by emailing a copy "to an email address provided as an address for service by the person".

In this case, I heard the landlord provided the tenant with an email address and the tenant has used it for sending rent payments. I did not hear specifically that the landlord gave the tenant the email address for service of documents. However, given the landlord's failure to provide the tenant with a service address, as required under section 13(2) of the Act, and the tenant's use of an email address that is regularly used to send rent payments, I deem the landlord sufficiently served pursuant to the authority afforded

me under section 71 of the Act. Therefore, I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue orders for compliance against the landlord?
2. Award of the filing fee.

Background and Evidence

The tenant submitted that her tenancy started in 2017 with the former landlord of the property. The tenant and the former landlord executed a written tenancy agreement on January 1, 2018. The tenancy agreement provides that the tenant paid a security deposit of \$500.00 and was required to pay rent of \$1000.00 per month, or \$900.00 if the rental unit was occupied by only one person.

The tenant testified that when the current owner purchased the property, a new tenancy agreement was not executed and she was not provided a service address for the current owner. Rather, she was provided the current owner's email address to send rent payments and his phone number which she uses to send text messages to him.

The tenant testified that she occupies the basement suite in the house and the upper unit is also tenanted. The current occupants of the upper unit moved in in October 2020 and starting in November 2020 the tenant started smelling smoke in her unit. The tenant testified that she smells the smoke nearly every day but that it is worse on the weekends. The tenant described the smell in her rental unit as akin to living in an ashtray.

In an effort to minimize the amount of smoke entering her unit she has shut the heating ducts leading into the rental unit. The tenant complained to the landlord numerous times, via text message. Generally, the landlord does not respond to her complaints but one time he said he would talk to the upstairs tenants about the smoke. Despite the landlord's assertion he would talk to the upstairs tenants there was no improvement in the amount of smoke entering her unit.

The tenant acknowledged that the smoke has been better now that the warmer months are upon us, and the tenant suspects this is because the windows are open; however, the tenant is concerned that once the colder months return the smell will worsen and the

tenant will be without sufficient heat as the heating ducts are closed to limit the amount of smoke entering her unit.

The tenant pointed out that her tenancy agreement prohibits smoking in the rental unit and the tenant suspects the upstairs unit would also have a no-smoking clause but she is not certain of that.

The tenant testified that in a different complaint she made to the landlord, the landlord responded that he was not responsible for the tenant's safety and comfort.

The tenant seeks for the landlord to 1) respond to her that he has received her complaints and will take action and 2) to take action to ensure smoke is not entering her rental unit.

As evidence for this proceeding, the tenant provided images of numerous text messages she sent to the landlord and the few responses the landlord provided.

Analysis

Under section 28 of the Act, every tenant is entitled to quiet enjoyment of the rental unit and residential property; and, the landlord is obligated to protect the tenant's right to quiet enjoyment. The right to quiet enjoyment includes freedom from unreasonable disturbance. Below, I have reproduced section 28 of the Act (with my emphasis underlined):

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:

- (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 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides for the following, in part:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

[My emphasis underlined]

Based on the unopposed submissions before me, I accept that there has been frequent and/or regular ingress of smoke and the smell of noxious fumes and odours entering the rental unit as a result of the actions of other tenants, or persons the tenants permit on the property, and that constitutes an unreasonable disturbance to the tenant. Further, I am satisfied the tenant had advised the landlord of the issue and he has not taken sufficient action. Therefore, I find the tenant has satisfied me that it is necessary to issue orders for compliance to the landlord.

In light of all of the above, I order the landlord to do the following:

1. Immediately upon receipt of this decision, provide the tenant with the landlord's service address in writing;
2. Within one day of receiving a complaint from the tenant regarding smoke, or any other issue, respond to the tenant's messages by acknowledging receipt of the complaint and informing the tenant of the steps the landlord will undertake to resolve the complaint.
3. Within one week of receiving this decision, determine the source of the smoke and how it is entering the rental unit.
4. Within one month of receiving this decision, ensure smoke does not enter the rental unit through the heating ducts, or any other gaps between the two living

units where smoke may enter, if any. Such action may include, but is not limited to, the following actions: ensuring the upstairs occupants and/or guests do not smoke inside, providing a separate heat source to the rental unit, and sealing gaps between the two living units.

Should the landlord fail to comply with the above orders and the tenant continues to experience smoke ingress, the tenant may make another Application for Dispute Resolution and seek further remedy, including monetary compensation from the landlord.

I award the tenant recovery of the \$100.00 filing fee she paid for this Application for Dispute Resolution and the landlord must repay her this amount. In satisfaction of this award, I authorize the tenant to deduct \$100.00 from a subsequent month's rent and in doing so the landlord must consider the rent to be paid in full.

Conclusion

I have issued orders against the landlord in this decision.

The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee paid for this Application for Dispute Resolution and in doing so the landlord must consider the rent to be paid in full.

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 14, 2021

Residential Tenancy Branch