



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- An order pursuant to s. 72 for return of her filing fee.

D.B. appeared as the Tenant. She was represented by K.E.. R.B. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Landlord’s Application to Join Applications

The Landlord advised that the Tenant filed a separate application in which the enforceability of a One-Month Notice to End Tenancy is in issue. I was provided with the file number for the Tenant’s other application, which indicates that it is scheduled to come on for hearing on October 7, 2022.

The Landlord made submissions that the matters had been joined on August 2, 2022. I have reviewed the Landlord's evidence and the information on file. The Landlord submitted an application that the two matters be joined, though the matters had not be joined prior to the hearing.

The Tenant's subsequent application involves her seeking an order cancelling a One-Month Notice to End Tenancy pursuant to s. 47 of the *Act* and an order that the Landlord comply pursuant to s. 62.

Rule 2.10 of the Rules of Procedure permits applications to be joined and heard at the same time. The rule states the following:

2.10 Joining applications

Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

The Landlord argued that the matters be joined on the basis that similar facts will need to be considered by the same adjudicator. The Tenant's representative objected to having the matters joined.

I declined to have the matters joined on the basis that though the two files pertain to the same tenancy, they deal with fundamentally different matters. The present application pertains to allegations that the Landlord is not complying with his obligations under the *Act*, Regulations, or the tenancy agreement. The subsequent application will deal with the enforceability of the One-Month Notice, which will involve an analysis of the circumstances leading to the Landlord seeking to end the tenancy. On a superficial level, similar facts may need to be considered insofar as they relate to the same tenancy. However, the two applications require a fundamentally different set of findings.

Further, the two applications have different statutory outcomes. This application may result in an order that the Landlord comply. The next application will deal with whether the tenancy continues or ends. If the matters would have been joined, the claim under s. 47 dealing with the enforceability of the One-Month Notice would have been the primary issue as its outcome is determinative on whether there is any need to consider the claims under s. 62. In other words, had the matters been joined, it would likely have resulted in the claims under s. 62 being severed by application of Rule 2.2 of the Rules of Procedure.

On balance, I find that joining the matters would be procedurally unfair and lead to no efficiencies. I find that the present application is not sufficiently related to subsequent application to permit joining the matters.

The hearing proceeded strictly on the application scheduled pertaining to Tenant's claims under ss. 62 and 72 of the *Act*

Issues to be Decided

- 1) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
- 2) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took up occupancy of the rental unit on August 1, 2019.
- Rent of \$800.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$400.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence. I was advised by the parties that the rental unit is part of a multi-unit residential property.

The Tenant's representative advised that the Tenant is in a state of conflict with two of the tenants in adjacent rental units. Allegations were raised by the Tenant that she has

been subject to verbal and physical attack, vandalism, and rocks being thrown on her balcony by her neighbouring tenants. I am told these incidents have resulted in the police being contacted.

The Tenant's evidence includes various video recordings. In one, a woman is seen picking up dog feces and placing it at the Tenant's front step. In another video, the Tenant is bringing items from her car when a male begins to yell at her from his front step. The Tenant's dog is seen going up the male tenant's front step and the male tenant can be seen kicking the Tenant's dog with sufficient force that it cleared the steps and landed some feet from the top of the landing.

The Tenant's representative says that a previous tenant, J.B., left the residential property due to her interactions with the one female tenant. I was directed to a statement from J.B. dated July 16, 2022, which was put into evidence by the Tenant.

The Tenant indicates that she has advised the Landlord with respect to her various incidents and that the Landlord has failed to take any action to address the other tenant's activities. The Tenant's evidence includes various notices to the Landlord with respect to her allegations against her neighbouring tenants.

The Tenant's representative argues that that Landlord can be held responsible for the breaches in the Tenant's right to quiet enjoyment. She further argues that the Landlord has not taken reasonable steps to address the conduct of the other tenants. The Tenant is seeking a finding that her right to quiet enjoyment under s. 28 has been breached by the Landlord's failure to take reasonable steps.

The Landlord argues that the Tenant is not innocent in her interactions with the other tenants. He says that it takes two people to harass. He further says that the one of the neighbouring tenants has been living within their rental unit for 10 years and the other for 5 years. The Landlord argues that problems only arose when the Tenant moved into her rental unit. The Landlord further alleges that the Tenant has placed rocks on the sidewalk as a trap for the other tenants to trip.

The Landlord argued that the Tenant's video evidence is edited and does not provide a fulsome picture of the interactions. The Landlord says that he has seen video from the other tenants in which the Tenant is seen instigating the conflict.

The Landlord further says that J.B. moved away from the property to move in with her daughter. It was argued by the Tenant that J.B. moved in with her daughter to get away from the property as quickly as she could.

The Landlord further testified to a level of helplessness with respect to the present conflict between the various tenants at the property. He says that he gives notice to the tenants respecting their conduct and that none of them listen. The Landlord failed to provide a copy any notice into evidence.

Analysis

The Tenant seeks an order pursuant to s. 62(3) that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement. Specifically, the Tenant argues the Landlord is not protecting her right to the quiet enjoyment of rental unit.

Section 28 of the *Act* sets out a tenant's right to the quiet enjoyment of their rental. These include the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit as set out under s. 29, and the right to use common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 provides further guidance with respect to the entitlement to quiet enjoyment and states the following:

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.

(Emphasis Added)

I have reviewed the Tenant's video evidence. I have little difficulty finding that the other tenants at the residential property are creating unreasonable disturbances and significantly interfering with the Tenant's right to quietly enjoy the property. In one of the videos, the Tenant can be seen returning to the property and going back to her car to retrieve items. The male tenant in that instance of his own volition and unprovoked

began to argue with the Tenant. The male tenant then kicks the Tenant's dog with sufficient force to send it flying down a set of steps and landing some feet from the landing where it had been kicked. The other video shows the female tenant walking a dog on a leash, picking up dog feces, and then spreading the dog feces on the Tenant's steps.

The Landlord argues that these videos are edited and do not provide the full context. With respect to the two videos I have mentioned, it is unclear what additional context should be considered. The one involved the Tenant going about her day returning to the property and retrieving items from her car. The other, the Tenant was not even present when the other tenant spreads feces on her doorstep.

The Landlord argues that the Tenant is not innocent and has initiated the disputes. I have been provided no evidence by the Landlord to support that allegation. Further, even if it were true, it would not negate the instances mentioned above in which the other tenants are significantly and unreasonably disturbing the Tenant.

Policy Guideline #6 is clear that the Landlord's obligation to ensure the Tenant's entitlement to quiet enjoyment of the rental unit extends to situations in which the Landlord is aware of the interference or unreasonable disturbance but has failed to take reasonable steps to correct these. The Landlord says that he has issued warnings and that no one listens. The Landlord says that he feels helpless. I do not accept that simply issuing warning notices without further action is all the Landlord could do under the circumstances.

The Landlord must take steps to address the conflict. These may include additional warnings. It may also require the Landlord to issue a one-month notice to end tenancy under s. 47 on one or some of the tenants. It may involve some other action by the Landlord. However, it requires that he do something as the conflict between the tenants has continued unabated. Policy Guideline #6 is clear that Landlord opens himself to a potential monetary claim under s. 67 of the *Act* from one (or all) of the tenants should he fail to adequately address the issue.

I find that the Landlord has failed to adequately protect the Tenant's right to the quiet enjoyment of the rental unit under s. 28 of the *Act*. Pursuant to s. 62(3) of the *Act*, I order that the Landlord comply with s. 28 of the *Act*.

Conclusion

Pursuant to s. 62(3) of the *Act*, I order that the Landlord comply with s. 28 of the *Act*.

The Tenant was successful in her application. I find that she is entitled to the return of her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's \$100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenant withhold \$100.00 from rent payable to the Landlord on **one occasion** in full satisfaction of the Landlord's obligation to pay her filing fee.

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: August 17, 2022

Residential Tenancy Branch