



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CKL INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RR, RP, PSF, OLC**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The tenant attended the hearing, accompanied by her brother. The corporate landlord and the personally named landlord were represented at the hearing by counsel, BM. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party took issue with timely service of documents, and both were ready to proceed.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issues

The personally named landlord advised me that the tenant had inadvertently reversed his given name and surname on the application for dispute resolution. In accordance with rule 4.2 of the Residential Tenancy Branch rules of procedure and section 64(3) of the Act, I have corrected the landlord's name to the one appearing on the cover page of this decision.

The tenant asked that I consider an application to return her security deposit which I declined pursuant to rule 2.2 as the claim is limited to those identified on the application for dispute resolution. I further advised the tenant that pursuant to section 38, seeking the return of the security deposit is premature as the disposition of the security deposit is determined after the tenancy has ended and the parties have conducted a condition inspection report.

Partial Settlement Reached

At the commencement of the hearing, the parties advised me that there was an agreement that the tenant would vacate the rental unit at the end of this month. Pursuant to section 63, I recorded the following terms of settlement:

1. The parties agree that the tenant will vacate the rental unit on 1:00 p.m. November 1, 2022.
2. The landlord will not seek damages for loss of rent for the tenant vacating the rental unit before the end of the fixed term tenancy.
3. To affect the agreement between the parties, the landlord will be provided with an Order of Possession effective 1:00 p.m. on November 1, 2022.
4. The landlord will provide the tenant with a date and time for a move-out condition inspection report.

Both parties advised me that they agreed to the above terms and understood they are legal, final, binding and enforceable.

At the commencement of the hearing, I advised the parties that, due to the hearing being limited to one hour, I exercised my discretion under rule 6.1 to dismiss the following portions of the tenant's application because this tenancy is ending:

- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27; and

- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damages or compensation?

Is the tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on August 1, 2022, with rent set at \$1,325.00 per month payable on the first day of each month. A security deposit of \$662.50 was collected from the tenant at the commencement of the tenancy which the landlord continues to hold.

The tenant gave the following testimony. She is 77 years old. The conditions of the rental unit that made her sick are forcing her to move out. She seeks compensation for the harm caused to her, due to an "unsafe condition". The landlord used "chemicals" in her unit and the tenant provided a single photo of a mouse bait station with a "poison" sticker on it as evidence of the chemicals. No other documentary evidence of chemicals in the unit were supplied as evidence by the tenant.

Due to a stain on the carpet and the chemicals used by the landlord to rectify the stain, the tenant is not able to use her bedroom and estimates that 20% of the space she rented is unusable. The tenant calculates the 20% as \$265.00 per month and she seeks compensation for 3 months, a total of \$795.00. When I asked the tenant how she arrived at the \$2,000.00 she seeks on the application, rather than the \$795.00 sum she provided for this hearing, the tenant responded saying the landlord failed to provide her with quiet enjoyment of the space. She then testified that her eyes hurt, and she

was going back and forth to the doctor. She has moving costs, too. I note that the tenant did not provide any receipts to corroborate the cost of any drugs or moving costs.

Together in this portion of her claim, the tenant alleges the landlord SG was “pounding on her door bullying her”. The tenant provided a statement dated September 12, 2022, from another tenant of the building indicating the landlord SG aggressively knocked on the tenant’s door at 6:30 p.m. demanding to know if a dog was in the suite.

In her application, the tenant seeks an additional \$32,999.00 as her health has been jeopardized due to a mold and mildew issue left unattended and because she was sexually harassed by another tenant. The landlord failed to provide a safe and quiet enjoyment of the tenancy. The tenant also testified that her unit had silverfish, and this has also affected her health.

To corroborate the claim of mold and mildew and silverfish, the tenant provided photos of the prescription and non-prescription drugs she takes. Also included are 3 photos of windowsills that the tenant states are moldy. The tenant testified that the mold caused a respiratory illness but didn’t specify the detrimental effects of the silverfish. I note no photos of the silverfish were presented as evidence, however photos of drugs she takes were supplied. The tenant did not provide any testimony as to what each drug was, or what ailment each drug was used for.

The tenant testified that she was racially and sexually harassed by another tenant. The tenant did not provide a date of the incident or identify the person who allegedly assaulted her, but in a letter to the landlord dated August 29, 2022, the tenant notes it’s the “fellow who lives across from my parking stall”. According to the letter, the landlord failed to act in stopping the harassment which includes being called racist names. This has led to her feeling degraded as a human being and the tenant seeks to be compensated for this. During the hearing, the tenant also alleges the fellow tenant had been leaving bird seed around her vehicle, causing birds to defecate on it.

In evidence, the tenant provided a witness statement. In the statement, the writer describes another occupant being rude to the tenant, yelling and spitting on her and using foul language on July 23, 2022.

The landlord gave the following submissions. The tenant did not adduce any evidence of the allegations she proposes were committed. No evidence of chemicals in her unit, no mold or mildew and no silverfish. The allegation of another occupant in the building engaging in racial and sexual harassment is unsubstantiated. While the tenant’s

evidence shows the police were called, no police report was submitted, and no charges were laid. In the landlord's evidence, the alleged perpetrator provides a statement where he denies the allegations.

The personally named landlord, the building manager, is not the person accused of harassment. He did investigate the alleged harassment claim and spoke to the tenant and a police officer. Nothing more could be done and there is no evidence of it occurring.

The landlord submits there is no mold, mildew, silverfish or chemicals in the rental unit, pointing to the condition inspection report done at the commencement of the tenancy whereby the tenant signed it saying there are no issues with it. Within weeks, the tenant started complaining in order to be moved to a different unit that was originally offered to her, but rejected.

The landlord SG testified that the stain in the tenant's carpet was red wine and it was washed twice by a carpet cleaning company they have used for years. No chemicals were used, just hot water and soap. Anything stronger is prohibited by law. There is no mildew or mold in the unit. When the tenant complained, he and his wife who cleans houses went and saw it was just dust that could be cleaned with window cleaner.

Regarding the tenant's claim he was bullying her, SG testified that he respects the humanity of all people and would never do that.

The landlord called another witness, JG who testified that he attended the unit to investigate the tenant's complaint on September 20th at 3:10 p.m. He didn't see any chemicals or mildew infestation. Regarding silverfish, the witness was shown a dead bug by the tenant but didn't know what kind of bug it was. He could not detect any smell of chemicals in the air. On cross exam, the witness acknowledges he is not an expert in chemical or an allergist.

Analysis

The tenant first seeks \$2,000.00 as compensation under section 65(1)(b). If the director finds the landlord has not complied with the Act, regulations or tenancy agreement, the director may order that the tenant may deduct this amount from rent to be expended on maintenance or a repair, or on a service or facility.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

The tenant testified that a 20% reduction of the rent paid would adequately compensate her for the loss of useable space in her rental unit due to what appears to be the stain on the carpet. Section 32 of the Act requires a landlord to provide and maintain a 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.

I find the landlord has complied with this section of the Act. I find insufficient evidence to satisfy me that the landlord used noxious or toxic chemicals to treat the stain or that the stain posed any threat to the tenant's health, safety or well being. While the tenant's testimony bears some weight, the tenant did not provide any documentary evidence to substantiate her claim that the bedroom was uninhabitable. Documents such as air quality reports or testimony from air quality technicians would have been demonstrative of evidence needed to prove this claim on a balance of probabilities. While it is possible the tenant may have health issues stemming from the chemicals in the bedroom, I cannot conclude that the landlord has done anything to contribute to them, given the lack of evidence before me. This portion of the tenant's claim is dismissed without leave to reapply.

Secondly, the tenant claims \$32,999.00 pursuant to section 67 as her health has been jeopardized due to mold and mildew issues left unattended; she has been sexually abused and verbally harassed by a tenant and the landlord failed to provide a safe and quiet enjoyment of her tenancy.

The tenant alleges mold and mildew in her unit, causing a deterioration of her health. Once again, I find insufficient evidence to support this. The tenant didn't supply a single photograph of the alleged mold or mildew in her unit. Nor was any testing done or experts brought in to substantiate the presence of mold and mildew. I have reviewed the photos of the unit provided by the tenant and I find the single photo of the windowsill shows nothing more than dirt. A second photo of a window casing appears to depict condensation which would be the tenant's responsibility to clean pursuant to section 32(2) of the Act. As the evidence to support this portion of the claim is insufficient, this portion is dismissed without leave to reapply.

To prove that there was a breach of quiet enjoyment, the tenant must provide sufficient evidence to show there was a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions or inaction which permitted interference by an external force within the landlord's power to control. In the matter before me, I have the tenant's testimony that she was called derogatory and racist

names by another tenant in the building. This was contradicted by a written statement from the alleged perpetrator in the landlord's evidence package. I heard testimony from the landlord that he went to investigate the allegation of the racist remarks and spoke to a police officer about it. Under the circumstances, I find the landlord took the appropriate steps to fix the problem. I heard no testimony from the tenant that the alleged harassment continued after the landlord went to investigate.

Once again, I would require more than the tenant's testimony to make a finding that her quiet enjoyment was breached by the landlord's inaction. In the same vein, the photograph of a bird dropping on her car doesn't lead me to the conclusion that another tenant purposely attracted the birds to her car with birdseed. This allegation is unsubstantiated. Likewise, I do not find the landlord harassing the tenant as she claims the night of September 12, 2022. According to the witness statement, this was a single incident of the landlord knocking on the door to determine if there was a dog in the suite. For the tenant to succeed in a claim for denial of quiet enjoyment, I must find a substantial interference with the ordinary and lawful enjoyment of the rental unit. I do not find that is the case here.

The tenant has provided insufficient evidence to satisfy me there was a breach of quiet enjoyment. Consequently, I dismiss without leave to reapply, the tenant's claim for compensation under section 67 of the Act.

Conclusion

Pursuant to section 63, I recorded the following settlement made between the landlord and tenant:

1. The parties agree that the tenant will vacate the rental unit on 1:00 p.m. November 1, 2022.
2. The landlord will not seek damages for loss of rent for the tenant vacating the rental unit before the end of the fixed term tenancy.
3. To affect the agreement between the parties, the landlord will be provided with an Order of Possession effective 1:00 p.m. on November 1, 2022.
4. The landlord will provide the tenant with a date and time for a move-out condition inspection report.

The remainder of the tenant's application is dismissed 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: November 2, 2022

Residential Tenancy Branch