



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, RP, FFT

Introduction

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

- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs; and
- return of the filing fee pursuant to s. 72.

K.D. appeared as the Tenant. The Tenant was joined by her partner and roommate, A.K.. M.H. appeared as the Landlord’s agent.

D.M. appeared at the outset and was identified as the Landlord’s witness, however, he was not called and did not provide evidence.

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. 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.

Issues to be Decided

- 1) Is the Tenant entitled to a rent reduction?

- 2) Should the Landlord be ordered to make repairs to the rental unit or residential property?
- 3) Is the Tenant entitled to her filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the Act. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

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

- The Tenant moved into the rental unit on May 1, 2020.
- Rent of \$2,141.00 is due on the first day of each month.
- A security deposit of \$1,055.00 was paid by the Tenant.

A copy of the tenancy agreement was provided to me by the Tenant. It specifies that the Tenant will have access to one parking stall.

1) Is the Tenant entitled to a rent reduction?

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

The Tenant and A.K. explain that the property in question is an older detached home that has been converted into three rental units with parking stalls that exit onto the street. As explained, there is no back alley for the property.

I am told by the Tenant that she notified the Landlord in June 2022 that she would need to make use of a parking stall. As explained by A.K., he needed the space to park his vehicle. I am further told by the Tenant and A.K. that the last open space, with the others being used by the other occupants of the residential property, had some garbage

bins. I am told that these garbage bins were moved in October 2022. The Tenant and A.K. tell me that they have made use of that space since October 2022.

The issue from the Tenant's perspective is that the remaining stall had a slope such that it scrapes the bottom of A.K.'s car. In the Tenant's application, she seeks a 15% reduction in rent for loss of use of rental space from June onwards, though at the hearing she made clear that the solution would be for her to be assigned to another stall. As argued by the Tenant, none of the parking spots have been assigned.

The Landlord's agent argues that the issue is not the parking stall but A.K.'s vehicle, which he argued was too low to the ground. According to the Landlord's agent, he's managed the property for approximately 20 years and has never had complaint with the parking stalls before. The agent further says that he parked his car in the stall to test it and did not issues doing so. A.K. acknowledges his car is lower to the ground, saying is 3 inches from the ground, but argued that this is stock from the manufacturer.

I am provided with a video of the issue by the Tenant, which shows the vehicle exiting and entering the parking stall scrapping the bottom while transitioning from the slope from the street to the level section of the covered parking lot.

The issue with the Tenant's claim is that she has failed to establish the Landlord breached the *Act* or that she has somehow lost use of a service or facility. The Tenant's tenancy agreement lists she is entitled to a parking stall. She has use of a parking stall and has had use of one since her partner needed it in October 2022.

Looking at it broadly on whether the parking stall in question is practically unusable such that it may constitute constructive removal of the facility, I further note that I am not satisfied that has occurred here. I accept that the stall is not the one the Tenant or her partner desire. However, it was the stall that was left available after the other occupants took one.

Review of the video does not show the stall to be inaccessible to a normal vehicle. I accept the agent's testimony that he parked there in his car without issue and that there have not previously been issue with other occupants. A.K. acknowledges that his car is 3 inches to the ground. Given such a low clearance, I suspect that he has issues parking in any stall that is not practically level.

I find that the Tenant has failed to demonstrate the Landlord breached the *Act*, tenancy agreement, or Regulations or lost use of a service or facility. Her claim for a rent reduction is dismissed without leave to reapply.

2) *Should the Landlord be ordered to make repairs to the rental unit or residential property?*

Section 32(1) of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make it suitable for occupation for a tenant having regard to the age, character, and location of the rental unit.

The Tenant's application seeks to have the parking area repaired or a new stall assigned. As explained to me by the parties, the Landlord did retain someone to repair the parking area in February 2023. The Landlord's evidence includes an invoice dated February 28, 2023 showing the uneven surface was repaired.

Based on the Tenant's submissions, it was unclear to me what she was seeking for repairs. To the extent that there were issues, those appear to have been dealt with by the Landlord when the repairs were undertaken in February 2023. Further, the Landlord's obligation to maintain and repair the property does not extend to accommodating an occupant's low-riding vehicle.

The issue, so far as I can ascertain, is that A.K.'s vehicle is 3 inches to the ground. The Landlord is under no obligation to accommodate an occupant's low vehicle, only to provide a parking stall that is useable, which in this case they have. The Tenant's position is akin to a tenant seeking the roof of a parking area to be elevated to accommodate their vehicle that was lifted.

Speaking briefly on the issue of reassigning the stalls. This is not associated with a claim for repairs under s. 32 of the *Act*. Strictly speaking, it is improperly pled and is not properly before me in this application.

I find that the Tenant has failed to demonstrate that the Landlord breached s. 32 of the *Act*. Accordingly, their request for repairs is dismissed without leave to reapply.

3) *Is the Tenant entitled to her filing fee?*

As the Tenant was unsuccessful, I find she is not entitled to her filing fee. Her claim under s. 72 of the *Act* is dismissed without leave to reapply.

Conclusion

I dismiss the Tenant's claim under s. 65 of the *Act* for a rent reduction without leave to reapply.

I dismiss the Tenant's claim under s. 32 of the *Act* for repairs without leave to reapply.

I dismiss the Tenant's claim under s. 72 of the *Act* for return of her filing fee 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: June 13, 2023

Residential Tenancy Branch