



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OLC

Introduction

On August 16, 2018, the Tenant applied for a Dispute Resolution proceeding seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

On August 17, 2018, the Tenant submitted an Amendment to her Application for Dispute Resolution seeking a request for monetary compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing and had R.C. attend as well as her advocate. L.S., G.M., and C.H. attended the hearing on behalf of the Landlords. All parties provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package and Amendment by registered mail and the Landlord confirmed that they received this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and Amendment.

Both parties confirmed that they received the respective evidence packages within the required timeframes as per the Rules of Procedure. As such, all evidence was considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for loss?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2014. Subsidized rent was established currently at \$340.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$300.00.

The Tenant advised that she was moved by the Ministry from a care home to the rental unit in late January 2014 and she was not aware that she would lose the assisted living services that she had previously. In the summer of 2017, tenants in the building began to harass her and in November 2017, one particular tenant harassed her verbally and another tenant sexually harassed her in the elevator. The police were involved and advised that this was a civil matter; however, the Landlord had been aware of the issues between the first tenant and dismissed the second claim as due to the other tenant's "mental problems". Incidents of further harassment from these parties occurred into February 2018 and the police were involved; however, the police did not take any further action.

On March 28, 2018, the Tenant requested that the Landlord address a leaking faucet and that a continuous tapping sound was emanating from the bathroom that was very disruptive. There was some disagreement regarding the origin of the tapping sound as it was suspected that the tenant below may have been intentionally causing this noise to disturb the Tenant. On April 5, 2018, the Tenant came home to find that a plumber attempted to address the plumbing issue and made a mess of the Tenant's belongings. On April 11, 2018, another email was sent to management as the plumbing and tapping issues persisted.

On April 30, 2017, a letter was sent to the Landlord advising that the Tenant suffered from harassment and bullying from staff, and that they had entered her rental unit without the proper written notice. The Landlords submitted a letter dated May 3, 2017 in

response to this letter from the Tenant and the Tenant provided a response letter back dated May 25, 2017.

The Tenant referred to a substantial number of documents submitted into evidence that corroborate her submissions and she is seeking monetary compensation for the breaches of the Act that the Landlord did not correct or take timely action to correct that the Tenant had to suffer through. The Tenant is also seeking an Order that she be moved to a different subsidized housing complex and monetary compensation for the loss of assisted living services that she no longer has access to.

The Tenant is seeking the following with respect to compensation:

Item	Amount
Extra rent charged above 25% (\$120.00 X 52 months)	\$6,240.00
Income reduction (\$55.00 X 52 months)	\$2,860.00
Hydro	\$1,122.53
Cable	\$3,082.52
Loss of quiet enjoyment	\$2,565.00
General and aggravated damages	\$2,500.00
Total Monetary Award	\$18,370.05

The Landlord submitted evidence demonstrating that they responded to the Tenant's complaint of a tenant harassing her and they responded accordingly by issuing a warning letter to the accused on October 24, 2017. The Landlord submitted another warning letter to this tenant dated November 8, 2017 regarding more complaints of inappropriate behaviour that warranted the police being involved. This tenant caused a third incident on April 26, 2018 and was taken to a mental health facility. As this tenant was admitted to this facility, upon her return to the rental property on June 4, 2018, this tenant was issued a third and final breach letter advising her to refrain from contacting the Tenant and disturbing others in the building. Any further incidents would lead to an eviction. The Landlord expected that this tenant would be giving notice to end her tenancy as she has been placed in a different rental property.

The Landlord stated that the Tenant reported an incident to management that she had with a different tenant in the building, but this was portrayed as a dispute over money or a robbery. They were never advised by the Tenant of a sexual assault. When they investigated the potential robbery claim, they talked to the other tenant involved and discussed this situation with the police, but it was determined that this was a "she said/she said" scenario.

With respect to the plumbing issues, the Landlord advised that the Tenant informed them of plumbing issues on March 28, 2018 and they contacted a plumber three days later. They submitted an invoice demonstrating that one leak issue was corrected on April 5, 2018. The Landlord also hired a plumber to investigate the other request for a leak repair and it was determined on April 13, 2018 that the leak may be originating from a suite three floors above the rental unit. However, the tenant in this unit was uncooperative and this complicated the plumber's ability to address the issue. The Landlord submitted an invoice demonstrating that this leak was repaired on April 27, 2018. The Landlord advised that the Tenant's complaints of a "tapping noise" could have been as a result of the tenant below causing a disturbance but they determined that this noise was more likely than not from the second leak issue that was corrected.

The Tenant advised that the leak stopped on April 19, 2018, that the repair was actually completed on April 23, 2018 on the above rental suite, and that the repairs were completed in her rental unit on April 26, 2018. She emphasized that this caused her to suffer from a lack of sleep and she is seeking justice for the loss of quiet enjoyment that she has suffered from all the issues that she has brought forth.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

During the hearing, the Tenant was advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. The Tenant was advised that there are no provisions in the *Act* which allow me to consider claims related to her belief that she suffered losses from being moved from a care home four years ago to her current rental unit. As well, she was advised that I do not have the jurisdiction to Order the Landlord to house her in a different rental unit. Consequently, the claims related to the Tenant moving to her current rental unit were dismissed in their entirety. The Tenant's claims for "loss of quiet enjoyment" and "general and aggravated damages" will be addressed in this decision.

Section 28 of the *Act* states that the Tenant is entitled to quiet enjoyment, reasonable privacy, and freedom from unreasonable disturbance.

Section 32 of the *Act* requires that the Landlord provide and maintain the 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.”

Regarding the Tenant’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

With respect to the Tenant’s claim of \$2,565.00 for a loss of quiet enjoyment, the Tenant indicated that this figure was calculated based on a hotel rate of \$135.00 per night from March 30, 2018 to April 18, 2018 as being comparable to the loss that she suffered during the time period of the plumbing repair issues.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that when the Tenant advised the Landlord that there were plumbing issues, steps were taken within days to address these issues and one leak was fixed within a week of being notified of the problem. While the second plumbing issue was corrected by the end of April 2018, difficulties with the upstairs tenant created extenuating circumstances that prevented the plumber from rectifying the issue sooner. Based on all of the evidence before me, I am satisfied that the Landlord acted swiftly to correct these issues as expediently as possible. Furthermore, the Landlord provided evidence that they investigated the source of the “tapping sound” and determined that it was likely due to the plumbing issue. When weighing the totality of the evidence, I do not find that the Tenant has provided compelling evidence to demonstrate that the loss she is claiming to have suffered is commensurate with the amount of compensation she is seeking or that the Landlord was negligent in addressing the plumbing issues. Ultimately, I am satisfied that the Landlord complied with their responsibilities under the *Act*. As a result, I dismiss the Tenant’s claims with respect to the plumbing issues and compensation in the amount of \$2,565.00 in their entirety.

With respect to the Tenant's claim of \$2,500.00 for general and aggravated damages, the Tenant could not elaborate on how she established a request for this particular amount of compensation. However, this compensation was to cover "general and aggravated assault, assault, sexual assault, bullying and intimidation from tenants and management" which negatively affected her health and general wellbeing since November 2017.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that when the Tenant advised the Landlord that there were some incidents with other tenants, the Landlord took immediate steps to investigate these issues and issue warning and breach letters to the tenant accused of harassment. The Landlord also advised that continued behaviour would lead to the tenant's eviction. Furthermore, the police attended and could not confirm the validity of the Tenant's claim. While the police advised in May 2018 that she could pursue stalking charges, the Tenant submitted that "she was suffering with the flu so she didn't have the energy to pursue the matter." In my mind, if the interactions with this tenant were as significant as claimed, I find it odd that further action has not been initiated. This causes me to place less weight on the Tenant's claim for loss.

In addition, the evidence before me is that the Landlord investigated the incident of what they were told was a potential robbery, but the Tenant claims she advised was an alleged sexual harassment. Regardless, the Landlord could not determine if there was any legitimate claim between the two parties. Furthermore, the police attended and could not confirm the validity of the Tenant's claim. I find it important to note that the Landlord did not provide an incident report with respect to this alleged incident. When weighing the aspects of this interaction on a balance of probabilities, I find this lack of an incident report to be consistent with the Landlord's evidence that they investigated the situation and could not determine if there was any merit to the Tenant's claim.

Finally, I do not find that the Tenant has provided any compelling evidence that points to specific incidents where the Landlord has bullied, intimidated, or harassed her. While I acknowledge that there may have been some incidents between the Tenant and other tenants of the building, when weighing the totality of the evidence before me, I do not find that the Tenant has provided persuasive evidence to substantiate that she suffered a loss or that the Landlord was negligent in addressing any of the Tenant's claims with respect to these issues. Ultimately, I am satisfied that the Landlord complied with their responsibilities under the *Act*. As a result, I dismiss the Tenant's claims with respect to

her claims for compensation in the amount of \$2,500.00 for general and aggravated damages.

Conclusion

Based on the above, I dismiss the Tenant's Application 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: October 24, 2018

Residential Tenancy Branch