



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR, MNDCT

Introduction

On September 3, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing and A.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand to the Landlord on September 4, 2019 and A.C. confirmed receipt of this package. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord by hand on October 10, 2019 and A.C. confirmed receipt of this evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence was accepted and will be considered when rendering this decision.

A.C. advised that the Landlord’s evidence was served to the Tenant by registered mail, but he was not sure when this was done. The Tenant stated that the address on the package was wrong, but she happened to receive this evidence a few weeks prior to the hearing. While the service address of this package may have been incorrect, as the Tenant received this evidence well in advance of the hearing and in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord’s evidence and will consider it 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 an Order for the Landlord to comply?
- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to monetary compensation?

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.

Both parties agreed that the tenancy started on April 1, 2015, that the rent was currently established at \$1,114.73 per month, and that it was due on the first day of each month. A security deposit of \$490.00 and a pet damage deposit of \$490.00 were paid.

The Tenant advised that she has been drinking the tap water since she moved into the rental unit but there has been an issue with the water recently as it comes out of the tap “milky white, with some greasy, foamy residue on the top and it tastes off.” She stated that she has had stomach issues and nausea since April 2019 and has attributed it to the water; however, she has not provided any medical documentation to corroborate any health issues. She advised the Landlord of this water issue and included pictures and videos demonstrating that there is something wrong, but the Landlord advised her that this was normal. The Landlord then advised her that if she had become sick, she should seek medical attention. After showing her doctor pictures of the water, she was advised not to drink it.

She stated that the apartment next door went through renovations in early spring and the water became milky after this work. On June 17, 2019, she contacted the city engineering department and the local health department and was advised that it was the Landlord’s responsibility to fix any issues related to the water entering the rental unit.

She advised that the Landlord told her that no other tenants of the building have experienced issues with their water; however, she has discovered that other tenants have had similar issues, but they were too frustrated by the Landlord's lack of response to push the issue any further. She submitted that the Landlord did arrange for a maintenance person to complete a water test; however, she was required to send the water sample in for testing, at her own expense. The result for this test came back inconclusive. She stated that after much argument, the Landlord conducted a second water test, that the test results were not provided to the Tenant, that the Landlord insists the water is fine, and as such, the Landlord will not take further action. She stated that the company that conducted this second test cannot provide her with the results but that the Landlord was sent a recommendation to fix the issue. However, her efforts to talk to the Landlord have resulted in her being asked to leave the office. She eventually received a copy of this test result, as the Landlord submitted this as evidence for this hearing. While the results of this test demonstrated that the water was normal, the appearance of the water is milky, and it still tastes bad.

She advised that a plumbing wholesale company recommended that she install a water filtration system, but she cannot afford to pay for this, and the Landlord refuses to as well. She stated that the Landlord had an employee go to the rental unit the day before the hearing to look at the water, and this person acknowledged that something was wrong with the appearance of the water.

The Tenant advised that she is seeking compensation in the amount of **\$1,200.00** because she has not been able to enjoy the full use of her rental unit. This amount is broken down as a loss of \$200.00 per month for the last six months and is based on research she has conducted on previous Dispute Resolution decisions with similar issues.

As she has had to purchase bottled water, she is also seeking compensation in the amount of **\$19.56**. Furthermore, she is seeking compensation in the amount of **\$18.60** for the cost associated with postage for the first water sample that the Landlord refused to pay for. She is also seeking compensation in the amount of **\$10.60** for the cost of an aerator adaptor that was suggested to be installed based on this test result.

The Tenant also sought compensation in the amount of **\$169.00** for the cost of a medical lab test and **\$81.00** for the cost of "future water supply, and other possible expense – approximat[sic]." However, as these have not been incurred and are not definitive costs, these claims have been dismissed with leave to reapply.

A.C. advised that the Landlord is required to provide hot and cold water that is safe for washing clothing, for bathing in, and for cleaning; however, the Landlord is not required to provide drinkable water, filtered or otherwise. He referenced the report and invoice, submitted as documentary evidence, of an independent company contracted to test the water and reiterated that the test results revealed no issues with the water. However, this company only tested the drinkability of the water and was not contracted to test the appearance. He acknowledged that the appearance of the water is not "100% clear", he stated that the cloudiness of the water is common in many older buildings, and he speculated that this could be due to calcium deposits. Based on the test results and the accompanying report, there were no recommendations to take any further action. He advised that he has had no other complaints or any reports of any physical problems from any of the other tenants of the building.

The Tenant advised of other issues she had with the rental unit. She stated that mice were discovered in the rental unit last year, that the Landlord took a long time to find a solution to this problem, and that it was inadequate as she has traps and poison in her rental unit. As well, while some areas of her rental unit were sealed, there are still rats in the building that will eventually get back into her rental unit. She also stated that there was a "huge bed bug issue" in the building but she does not have them in her rental unit.

A.C. advised that he walks the building weekly to observe any deficiencies in the building, that the office is open for anyone that may have complaints, that they have opened up an online portal for tenants to document any maintenance issues they may require, and that there is an after-hours emergency contact line for available for tenants. Regarding the mouse issue, he stated that there has only been one complaint in the last six months and that had been addressed. With respect to the bedbug issue, he stated that there was only one complaint four months ago, that there were more recent complaints recently, and that the Landlord has been addressing this issue.

The Tenant stated that she has squirrels and birds that want to enter her rental unit if she opens her patio door, that she advised the Landlord of this issue, that she requested a screen door to address this problem, and that the Landlord denied this request.

A.C. stated that a screen for the patio door was not provided at the beginning of the tenancy, it was not included as part of the tenancy agreement, and the Landlord should not be responsible for having to provide one now.

The Tenant stated that there are incidents of domestic violence in the building and the RCMP attend regularly. As well, there is a light at the back of the building that has not been functioning for over a year and the Landlord will not fix it. She referenced pictures, submitted as documentary evidence, of this broken light to illustrate the safety concern that someone could easily enter her rental unit relatively undetected.

A.C. stated that a tour of the building was recently conducted with the RCMP for a crime free assessment, and the Tenant's rental unit was inspected as well. No specific concerns were raised.

The Tenant stated that the housekeeping of the building is "horrible", that the building "smells bad", that the common areas are dirty, and that the staff that clean the building are on their phones as opposed to cleaning. She referenced the pictures submitted to support her position on the state of the common areas.

A.C. advised that the cleaners are in the building every day and that the Landlord walks the building every two weeks. The Landlord's position is that the building is in good condition.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* outlines the Landlord's and Tenant's obligations to repair and maintain the rental unit and states that "A landlord must provide and maintain 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."

With respect to the Tenant's claims for compensation on the relevant water issue, 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?

While the Tenant brought forth multiple complaints about issues that needed repairing, the first one I will address is with respect to the water issue, as this was the focus and her main concern. I find it important to note that Policy Guideline # 1 states that the Landlord is required to provide a rental unit that meets “health, safety and housing standards’ established by law, and are reasonably suitable for occupation given the nature and location of the property.” While the undisputed evidence is that the appearance of the water coming out of the Tenant’s tap is not clear, the burden of proof is on the Applicant to show that the water is not safe for consumption. Based on the evidence submitted before me, the Tenant acknowledged that the first test results were inconclusive. Furthermore, the independent company contracted out to test the water a second time revealed that the water coming out of the Tenant’s taps complied with the Health Canada Drinking Water Quality Guidelines and that further investigation was not recommended. Moreover, the Tenant has not provided any medical documentation linking her health issues to the alleged tainted water. Even though the appearance and taste of the water may be different or unusual, I do not find that the Tenant has provided sufficient evidence to substantiate that the water is unsafe to drink. As such, I am not satisfied that the Tenant has established her claims on this issue, and I dismiss her monetary claims associated with the tap water. Should the Tenant continue to be dissatisfied with the appearance or taste of the water, the Tenant may wish to seek alternative solutions to make this more palatable.

However, as there is an acknowledged issue with the appearance or clarity of the water, I do not find that it is the Tenant’s responsibility to pay for mailing a sample of the water for testing. As such, I find that the Tenant is entitled to recover the **\$18.60** in postage fees for this cost.

With respect to the mouse and bedbug issues, I find it important to note that the Landlord has taken steps to rectify the mouse issue when notified of the problem. While it is the Tenant’s belief that this is an ongoing issue, I acknowledge that treatment for such a pervasive issue can take some time to eradicate the infestation entirely. Based on the evidence before me, I do not find that the Tenant has substantiated a claim that a Repair Order is necessary to be granted in this particular instance as it appears as if the Landlord is making efforts to rectify the problem. As such, I dismiss the Tenant’s claim with leave to reapply should this situation worsen.

Regarding the issue with the bedbugs, as it appears as if the Landlord has taken steps to deal with this issue, and as the Tenant was in agreement that this has been addressed, I dismiss this portion of the Tenant's claim in its entirety.

Regarding the Tenant's request for a screen door, as this was never included as part of the rental unit, I am satisfied that the Landlord is not required to provide this to the Tenant now. As such, I dismiss this claim in its entirety.

With respect to the issue of the safety of the building and the broken light at the back of the building, there is insufficient evidence that has been provided illustrating that there is a safety or security issue with the building. However, the consistent and undisputed evidence is that the back light has not been functioning for some time. Consequently, I Order that the Landlord repair this issue by replacing or repairing this light, and that this repair be completed by **November 30, 2019**.

With respect to the general housekeeping of the building, when reviewing the totality of the evidence, I have before me pictures from the Tenant depicting the condition of the common areas of the building; however, these pictures are black and white, and any deficiencies are hard to discern. While A.C.'s position on this issue is contradictory to the Tenant's, I find it important to note that the burden lies on the Tenant to substantiate the claim that she is making. While her opinion of the cleanliness of the common areas of the building may have some merit, I do not find that the quality of her evidence fully corroborates this claim. As such, I dismiss this issue with leave to reapply.

Conclusion

I dismiss the Tenant's Application for monetary compensation and a rent reduction without leave to reapply. However, I grant the Tenant a monetary award in the amount of **\$18.60**, and the Tenant may withhold this from a future month's rent.

I dismiss the Tenant's Application for the mouse infestation issue and the general upkeep and maintenance of the rental building with leave to reapply.

I dismiss the Tenant's Application regarding the bedbug issues and the screen door without leave to reapply.

I Order the following:

- The Landlord must repair or replace the broken light at the back of the building, and this must be completed by **November 30, 2019**.

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 6, 2019

Residential Tenancy Branch