



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Neighbourhood Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RR, PSF

Introduction

The tenant filed their Application for Dispute Resolution (the “Application”) on February 25, 2021. They seek the landlord’s compliance with the tenancy agreement and/or legislation, the landlord’s provision of services or facilities required by the tenancy agreement or law; and a reduction in rent for services agreed upon but not provided. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 3, 2021.

The tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenant must provide proof that the document has been served using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The tenant set out how they served this notice to the landlord’s place of business. This is the same property as that of the tenant’s own rental unit. They gave the notice of this hearing and their prepared evidence to a security guard at the workplace on May 17, 2021. The guard took down details in their logbook and stated they were going to give the package to the landlord. The landlord is known to the tenant and they have had a number of interactions in the past.

Based on the submissions of the tenant, I accept they served the notice of this hearing in a manner complying with s. 89(1)(b) of the *Act*. The guard so served is an agent of the landlord. With service having occurred in a satisfactory manner, the hearing thus proceeded in the landlord’s absence.

Issue(s) to be Decided

Shall the landlord comply with the *Act*, the regulations and/or the tenancy agreement?

Shall the landlord provide services or facilities required by the tenancy agreement or law?

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

Background and Evidence

The tenant's Application provides background on the situation they face on a regular basis. A neighbouring unit occupant blocked passage through to a fire exit, this "for over two years." The tenant here made complaints to the landlord; however, at the time of their Application "the situation has only got worse". This storage of items now includes "flammable items" which the tenant in the hearing described as carpeting.

The tenant points to the tenancy agreement as stating that nothing can be stored outside of the rental units at that property. The landlord's response to the tenant's queries and complaints only results in statements from the landlord that "nothing can be done" and there is no reason that a landlord can ever evict a tenant.

The tenant provided in their Application that this is a "refusal to follow [the] law".

In their document evidence, the tenant provided a copy of their tenancy agreement. This shows the start of tenancy on February 23, 2009, initially for a term of 3 months. At the start of the tenancy the rent amount was \$356; by the time of this dispute Application, the rent amount is was \$409.50. This rent amount is subsidized monthly in a government-supported plan for the tenant's rent.

The tenant provided a copy of the Addendum that forms part of the tenancy agreement. In a sub-heading listed as "Repairs", the Addendum states:

The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

The tenant highlighted portions of the Addendum as follows:

The tenant must take all reasonable steps to ensure that the use of common areas to the residential property . . . will. . . (a) be prudent, safe and equitable. . .

Further:

The tenant must not store any heavy appliances, bicycle, wheelchair, baby carriage, scooter or power scooter on balconies or in hallways, and must not store any property except in proper storage areas.

The tenant here described the issue further in a written submission. A neighbouring resident, who is the source of the stored items that block common access walkways and block the fire exit, threatened violence against other residents. This was with the accusation that other residents were “stealing some of the junk he stores outside his place.” Despite the tenant’s claims, the current landlord would not address the incident which otherwise would be grounds for ending that other resident’s tenancy.

The tenant provided copies of their written complaints to the landlord, each labelled “Incident Report”:

- January 1, 2020: a complaint of noise contains the tenant’s extra notation: “PS when are [you] going to stop him blocking the fire exit?”
- August 19, 2020: an episode involving the police contains the tenant’s notation: “PS he is still blocking the exit with his junk as he has done ever since he moved in.”
- May 2, 2019: the neighbouring tenant made a threat to the tenant here, based on their suspicion of the tenant’s raising issues with the landlord
- May 1, 2019 and April 22, 2019: the neighbouring unit occupant keeps a dog that makes a lot of noise during their absence from the unit – the tenant here notified security guards at the property who witnessed the level of noise and interruption this causes
- April 13, 2019: a conflict arose with the use of the laundry facilities
- February 17, 2020: the tenant raised an issue of their own unit entry blockage with the landlord who did not respond; further, the fire exit was blocked with a “bike chop-shop”

The tenant also included 12 separate photos showing the neighbouring occupant’s storage of items in the common walkway area. These consistently show bicycles in various states of assembly locked to the gates, miscellaneous collections of items in tubs and storage bins; and an appliance which is clearly blocking the fire exit passage. Each photo is taken from the

tenant's perspective whilst turning to their left, towards the end of the passageway showing the fire exit on the end of that passage.

In the hearing, the tenant described how they gave these written incident reports to the landlord, yet nothing ever changed with the situation. The tenant stated they "know for a fact that the landlord didn't read them". They also reported the landlord's response to their concerns, that "you could murder someone and still live there."

Their summary statement is that the landlord is not doing their job. The neighbouring resident simply stores all manner of items in front of the tenant's unit, and when this tenant mentions the incidents, this results in threats from that neighbouring resident. Overall, the tenant stated that communication with the landlord is "very difficult."

The tenant here claims \$500 in rent reduction in line with the nature of the infringement of their right to quiet enjoyment.

Analysis

The *Act* s. 62(3) provides that:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

With reference to the nature of the tenant's submissions and evidence they present here, I find Division 4 of the *Act* – as reflected in the tenancy agreement and its Addendum – has application to the current situation. These sections are:

- A protection of the tenant's right to quiet enjoyment in s. 28, and subsection (d) provides for "use of common areas for reasonable and lawful purposes, free from significant interference."
- A protection of the tenant's right of access, in s. 30: A landlord must not unreasonably restrict access to the tenant of a rental unit that is part of the rental property.

I find both of these pieces as set in the *Act* apply to the situation presented by the tenant here. They provided sufficient evidence, in a clear manner, to show their right of passage to and from their own unit is being blocked by another resident's use of a common area for their own storage. This is an unreasonable infringement on the tenant's own access to their unit.

Ultimately, it is the landlord's responsibility, as per ss. 28 and 29 of the *Act*, to ensure the tenant's own access is in place.

Of a more serious nature are the tenant's attempts to initiate their concerns with the landlord or address the issue with the neighbouring tenant on their own. I find the tenant's evidence is credible that this is resulting in threats from that neighbouring resident. According to the tenant here, one police visit had the attending officer stating their concern with the situation to the tenant. I find as fact that the situation did not change.

Whether the same tenancy agreement and Addendum is in place with the other neighbouring resident is not known. That normally would be a separate matter between the landlord and the neighbouring tenant; however, I find it pragmatic to highlight the portions in the addendum that the tenant here brought to my attention. These are the "prudent, safe and equitable" use of the common areas, and a firmly stated prohibition against storage. I find these are reasonable standards that, should they apply to one single building resident (as it does to the tenant here), they must apply to all building residents. I find these portions of the Addendum approximate what the *Act* provides for in Division 4.

Additionally, I find the tenant's entitlement to quiet enjoyment is jeopardized here. The situation they present with clear testimony and evidence is that of an unreasonable disturbance. Additionally, this is an infringement of the tenant's quiet enjoyment of the use of common areas free from interference.

I find the landlord has not addressed or responded to these concerns in a suitable manner; moreover, they did not attend this hearing to speak to the matter in a responsible manner. The situation has involved the police and hired security yet remains in an unacceptable state. I caution the landlord that this is frequent and ongoing interference, in a situation where the landlord is aware of the disturbance but is failing to take reasonable steps to correct this. With no evidence to the contrary, I find as fact that the neighbouring resident is making threats and intimidating the tenant here – this is a breach to their entitlement to quiet enjoyment and can form the basis for a claim for compensation. This could result in a substantial award for compensation where the seriousness of the situation is under examination.

I also find the blocked access to the fire exit, as clearly shown in the tenant's photo evidence, to be unacceptable. The tenant is free to notify local fire authorities of this serious breach of fire regulations. A heavy appliance is shown to be blocking the exit door, this presents a serious risk to physical safety.

The tenant here claimed \$500 in rent reduction, this for the interruption to the right to quiet enjoyment. They also raise the palpable threat to their personal belongings because of the other residents' storage of flammable materials. A rent reduction is difficult given that the tenant does not pay rent directly. I so award \$200 directly to the tenant for the landlord's failure to comply with the provisions of the *Act* in a diligent manner. A monetary order accompanies this decision.

Conclusion

I find the tenant provided sufficient evidence to show the landlord is not complying with the *Act* and the tenancy agreement. I so order the landlord to rectify this situation to ensure this tenant's rights are upheld. A monetary order as compensation to the tenant for this breach accompanies this decision.

Pursuant to sections 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$200, as compensation to the tenant for the landlord's breach. I provide the tenant this Order in the above terms and they must serve the landlord with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 4, 2021

Residential Tenancy Branch