Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, OLC, FFT

Introduction

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

- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of his filing fee pursuant to s. 72.

By way of amendment filed on August 3, 2022, the Tenant also seeks a rent reduction pursuant to s. 65 of the *Act*.

M.L. appeared as the Tenant. K.S. appeared as agent for the Landlord.

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 Tenant advised having served the Landlord with his Notice of Dispute Resolution and evidence. I was provided with a registered mail receipt dated July 16, 2022 as proof of service. The Landlord's agent acknowledged receiving these materials without objection. Pursuant to s. 71(2) of the *Act*, I find that the Landlord was sufficiently served with the Tenant's Notice of Dispute Resolution and evidence.

The Landlord's agent confirmed that the Landlord did not serve evidence in response to the application.

Preliminary Issue – Service of the Tenant's Amendment

I enquired whether the Tenant's amendment had been served as the sole proof of service was a registered mail receipt dated July 16, 2022. As mentioned above, the amendment was filed with the Residential Tenancy Branch on August 3, 2022. Rule 4.6 of the Rules of Procedure requires applicants to serve copies of their amendment on the respondents as soon as possible and at least 14-days prior to the hearing. The Tenant was unable to confirm how and when the amendment was served.

The Landlord's agent denied receiving the amendment but acknowledged receipt of a letter dated July 25, 2022 from the Tenant, which outlines the parameters of the rent reduction claim. The Landlord's agent advised that despite not being served with the amendment, he raised no objection to amending the claim to permit the rent reduction claim as he was given sufficient notice in the form of the July 25, 2022 letter.

Based on the consent of the Landlord's agent, I permit the amendment of the Tenant's application to include the rent reduction claim. I find that to do so is not procedurally unfair to the Landlord given the consent given by its agent and given that the July 25, 2022 letter, setting out the claim, was received by the Landlord. I accept the Landlord's agent submission that he had sufficient notice of the claim and was prepared to proceed.

Issues to be Decided

1) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
2) Is the Tenant entitled to a rent reduction?
3) Is the Tenant entitled to the return of his filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

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

- The Tenant took occupancy of the rental unit on November 1, 2011.

- Rent has been increased effective January 1, 2023 such that $1,008.91 will be due on the last day of each month.
- A security deposit of $425.00 was paid by the Tenant.

A copy of the tenancy agreement was provided by the Tenant.

I was advised by the parties that they have been before the Residential Tenancy Branch approximately one year ago with respect to a previous application by the Tenant. I was provided with the file number for the previous matter, indicating a decision was rendered on August 12, 2021. Review of the previous matter indicates that the Tenant had filed an application due to a complaint of noise disturbances from the occupant living above him within the residential property. The arbitrator found that the disturbances constituted an unreasonable disturbance in contravention of the Tenant's right to quiet enjoyment under s. 28 of the *Act* and further found that the Landlord failed to take adequate steps to resolve the problem. The Landlord was ordered to comply with the *Act* and provide the Tenant with quiet enjoyment of the rental unit.

The Tenant testified that the noise disturbance has continued unabated and that it appears the other occupant is operating a business in the rental unit. The Tenant says he has been stressed by the noise disturbances and that he and his partner are travelling abroad for several months to get some reprieve. He says he is returning in February 2023 and is requesting some financial relief in the form of a rent reduction due to the continued disturbances, but was not specific in the amount requested at the hearing. The July 25, 2022 letter requests a 25% rent reduction.

The Landlord's agent testified that the tenant above is decent fellow who does not appear to be running a business from the rental unit. The Landlord's agent submitted that he is not certain that the noise disturbances are so significant to rise to the level of evicting the other occupant. The Landlord's agent made specific reference to the audio files provided by the Tenant in evidence. I enquired what steps the Landlord had taken since the previous decision and was advised by its agent that the issue was raised with the other tenant. I am told the other tenant was defensive.

The Landlord submitted that the building is a wood-frame structure built in the 1960s and that a certain level noise is to be expected. It was argued that everyone has different noise tolerances and that if the Tenant feels the noise is too much, perhaps he should look to other accommodations. The Landlord's agent further submitted that a rent reduction of 25% was too high given the circumstances.

Analysis

The Tenant seeks an order that the Landlord comply and a rent reduction.

Dealing first with the claim under s. 62(3) of the *Act*, this matter has already been adjudicated and an order made with respect to this issue. I find that the doctrine of res judicata applies under the circumstances, specifically issue estoppel. Res judicata, which is to say the matter has already been decided, prevents parties from relitigating matters where a decision has been made. In both applications, the parties are the same; the issue in dispute, being a claim that the Landlord comply with respect to the noise disturbance, is the same; and the previous decision was final. I decline to determine this aspect of the application once more as there has already been findings and a determination in the previous matter.

Looking next at the rent reduction claim, 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.

Presently, there has already been a finding that the Landlord has failed to adequately protect the Tenant's right to quiet enjoyment under s. 28 of the *Act*. I am not sitting in appeal of the previous matter, which as mentioned above is res judicata. The issue to be determined is whether the Tenant has established the reduction in value to the tenancy agreement caused by the noise disturbance.

I am not convinced that the Tenant has properly set out the loss in value to the tenancy caused by the disturbances. As mentioned above, claims under s. 65 for a rent reduction are generally raised in the context of a loss of a service or facility, either permanently pursuant to s. 27 or a period in which a repair is undertaken. The loss of quiet enjoyment can conceivably be advanced under s. 65(3) of the *Act*, however, I have been provided little evidence detailing the frequency or severity of the disturbances in which I could begin to quantify the loss of value. To be certain, there are nearly two dozen audio recordings provided to me, but reference to the materials indicate these were recorded on April 12, 2022; April 15, 2022; January 1, 2022; December 31, 2021; December 30, 2021; and September 29, 2021. This hardly provides a picture of the frequency of the disturbances upon which to quantify the loss of value, if any, to the tenancy.

Rule 2.2 of the Rules of Procedure limits claims to what is stated in the application. The Tenant is not advancing a claim for monetary compensation under s. 67 of the *Act* as that is not what was included in the amendment. I would note that the previous decision had advised the Tenant could do so under that section, rather than claiming under s. 65 as he has done here.

In any event, I find that the Tenant has failed to establish the loss of value to the tenancy upon which I could quantify the loss of value to the tenancy. The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's claim under s. 62 of the *Act* is res judicata having been previously decided in the decision of August 12, 2021.

The Tenant has failed to discharge his evidentiary burden of quantifying the loss of value to the tenancy caused by the disturbance. The claim for a rent reduction under s. 65 of the *Act* is dismissed without leave to reapply.

I find that the Tenant was unsuccessful in his application and is not entitled to the return of his filing fee. His claim under s. 72 of the *Act* 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 16, 2022

Residential Tenancy Branch