



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Western Community Low Cost Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply - Section 62; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions.

Service

On December 13, 2022 the Tenant served the Landlord with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) to an employee at the Landlord’s office and a document was signed confirming receipt of the Hearing Package. The Landlord subsequently informed the Tenant that the employee was not authorized to accept service of documents. The Tenant then served the Hearing Package in person to the manager of the Tenant’s building and this person refused to take it.

Section 89(1)(b) of the Act provides that an application for dispute resolution must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(f)by any other means of service provided for in the regulations.

Section 71(2)(c) of the Act provides that the director may make orders that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. Whether or not the Landlord authorized any employee to accept service of documents, as the Hearing Package was delivered to and accepted at the Landlord's office by an employee of the Landlord who also signed for its acceptance as an agent, I find that the Hearing Package was sufficiently given or served for the purposes of the Act on December 13, 2022.

Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on May 1, 2011. At the outset of the tenancy the Landlord collected \$250.00 as a security deposit. The original subsidized rent of \$371.42 was payable on the first day of each month. The monthly rent has since increased to around \$500.00.

Over the past year or so the Tenant has experienced on a daily basis the smell of either cigarette smoke or chemicals in their unit. The smell has been occurring in the early mornings and again after 6:00 p.m. and throughout the night to early hours the next day. The Tenant has been affected by the smell to the point of vomiting. The Tenant

believes that the unit below is the source of the smell as prior to the smell occurring another tenant occupied that unit and there was no such smell during that previous tenancy. The Landlord has taken some steps to investigate the lower unit and has indicated that the tenant in the lower unit has been asked to “work on the smell issue”. The Landlord also took air quality samples in the Tenant’s unit and informed the Tenant that nothing was detected. The Tenant believes that this was because the tests were taken during the day when the odor did not occur. The odor has continued, and the Landlord has not communicated with the Tenant since. The building is a non-smoking building however some units at a far distance from the Tenant’s unit are “grandfathered in” to allow smoking in these units. The Tenant does not believe that the odor in the unit is from these other units.

The Tenant seeks an order for the Landlord to investigate and confirm the odor in the Tenant’s unit by having air quality testing done over a 48-hour period no later than May 15, 2023. The Tenant asks that the Landlord be ordered to report the findings of these tests to the Tenant by no later than May 22, 2023. If the tests demonstrate the presence of chemical or smoke particulates the Tenant seeks an order that the Landlord provide the Tenant, along with the report, an outline of the steps to be taken to investigate the source of the odor, in particular the unit below, within the following 30 days from May 22, 2023.

Analysis

Section 28(b) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. Section 62(3) of the Act 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. Based on the undisputed evidence that the Tenant is being subjected to an episodic odor that causes the Tenant to be ill on occasion, I find that the Tenant has substantiated that their right to freedom from an unreasonable disturbance is being

breached. I also find that the Tenant is seeking a reasonable order for the Landlord to take further steps to investigate the odor and its source. For these reasons I order the Landlord to comply with the Act as follows:

1. To obtain air quality testing in the Tenant's unit over a 48-hour period by no later than May 15, 2023;
2. To obtain a report of the outcome of the testing (the "Report") and to provide a copy of the Report to the Tenant no later than May 22, 2023; and
3. If the Report demonstrates the presence of chemical or smoke particulates in the Tenant's unit, to attach an outline to the Report of the steps to be taken by the Landlord no later than June 22, 2023 to investigate the source of the odor and to include in particular the investigation of the unit below the Tenant's unit.

As the Tenant has been successful with their claim, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Landlord is ordered to comply with the Act as set out above.

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

Dated: April 19, 2023

Residential Tenancy Branch