Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, OLC

Introduction

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

- an order pursuant to s. 65 for a rent reduction for repairs, services, or facilities; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

R.W. appeared as the Tenant. P.C. and B.S. appeared as the respondent Landlords. The respondents were represented by their counsel, A.E..

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.

Preliminary Issue – Service of the Tenant's Application Materials

At the outset of the hearing, I enquired whether the Tenant had served his application and evidence on the Landlord. I as told that he had. Landlord's counsel acknowledged receipt of the Notice of Dispute Resolution and the Tenant's paper application but denied receipt of the evidence.

Looking first to the application, I accept that it was received by the Landlords and that pursuant to s. 71(2) of the *Act* it was sufficiently served.

With respect to the evidence, the Tenant clarified that he served his evidence on the Landlords via registered mail sent on May 11, 2023. The Tenant's evidence includes a

registered mail tracking receipt of that date as proof of service. Review of that tracking information shows the package had not been retrieved.

Rule 3.14 of the Rules of Procedure requires applicants to serve their evidence on each named respondent and that it must be received by the respondents at least 14 days prior to the hearing. Further, when a document served in accordance with the *Act* is not retrieved or service is otherwise refused by the recipient, I may deem that the documents were received under s. 90 of the *Act*.

In this instance, I accept that the Tenant sent a package containing his evidence on May 11, 2023. However, there can be no doubt that this was not received by the Landlords in compliance with the 14-day deadline imposed by Rule 3.14. Also, even if I were to apply the deeming provision as I accept the package had been sent on May 11, 2023, that would result in deemed receipt on May 16, 2023. This is again in breach of the 14-day deadline.

Beyond the issue of service, I note that the evidence provided by the Tenant to the Residential Tenancy Branch comprise of 544 separate files totalling 2.05 GB of data. Cursory review of the documents shows various videos have been provided and numerous photographs. None of the documents have appear to have page numbers, there is no table of contents, nor does there appear to be an RTB-43 form identifying and describing the digital evidence.

Rule 3.7 of the Rules of Procedure requires evidence to be clear, organized, and legible. Rule 3.10.1 requires digital evidence to be identified with a description of its contents. These rules together ensure that recipients have a clear view of the other sides evidence to ensure a fair, efficient, and effective process.

The Tenant's evidence is disorganized, unlabeled, and likely contains a great deal of evidence irrelevant to the application. Even had it been served on time, I would have found that the evidence breached Rules 3.7 and 3.10.1 such that it would be unfair to consider it given that it is not readily available or organized.

I find that the Tenant failed to serve his evidence in accordance with the Rules of Procedure and the *Act* such that it would be procedurally unfair to the respondents to review and consider it. Accordingly, it is excluded.

The Tenant enquired whether he could be given additional time to see that his evidence was received by the respondents. I declined to grant the adjournment request because there is no explanation why the Tenant could not have served his evidence sooner such that he complied with Rule 3.14. It is inappropriate, in my view, to grant an adjournment due to the Tenant's inability to comply with the relevant deadlines in the application process.

Mid-way through the hearing, the Tenant also advised that he submitted an amendment to his application to the Residential Tenancy Branch some days before the hearing. I enquired whether it had been served. The Tenant acknowledged that it had not been. Rule 4.6 of the Rules of Procedure requires applicants to serve their amendments. In this instance, as the amendment was not served, I do not permit it. The claims are limited to what is stated in the application as per Rule 2.2 of the Rules of Procedure.

Issue to be Decided

1) Is the Tenant entitled to a rent reduction?
2) Should the Landlords be ordered to comply with the *Act*, Regulation, or tenancy agreement?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

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

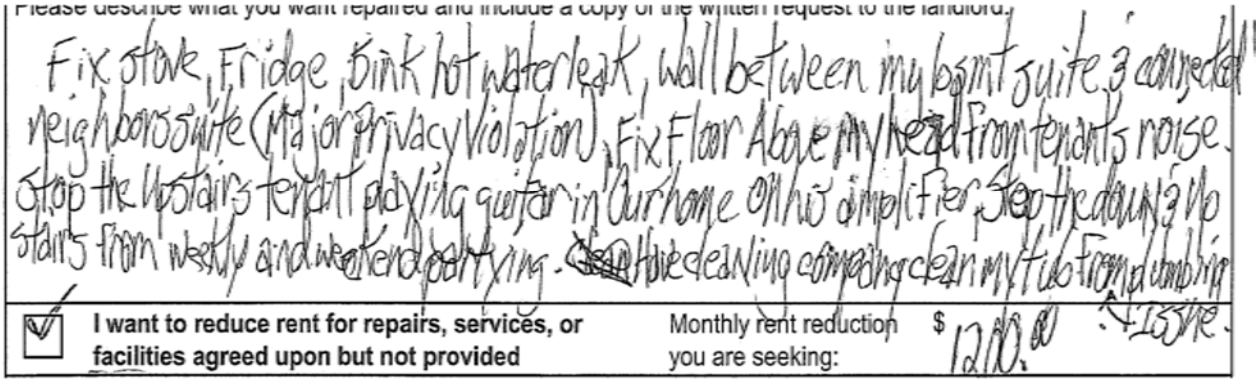
- The Tenant moved into the rental unit 4.6 years ago.
- Rent of $835.00 is due on the first of each month.
- A security deposit of $420.00 was paid to the Landlords.

I am not provided with a copy of the tenancy agreement.

Is the Tenant entitled to a Rent Reduction?

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.

The Tenant's paper application notes that he is seeking a past rent reduction of $50.00 per month for 2 years noting fridge, stove, and hot water. Written above the claim states the following:


Please describe what you want repaired and include a copy of the written request to the landlord.

Fix stove, Fridge, Sink hot water leak, wall between my bsmt suite & connected neighbors suite (Major Privacy Violation), Fix Floor Above my head from tenants noise. Stop the upstairs tenant playing guitar in our home on his amplifier, Stop the drug & No stairs from weekly and weekend partying. Stop the cleaning company clean my tub from plumbing issue.

☑ I want to reduce rent for repairs, services, or facilities agreed upon but not provided

Monthly rent reduction you are seeking: $ 1200.00

The Tenant advised that the Landlord he notified the Landlord that his stove was broken 1.5 years ago and that nothing was done to repair the issue. The Tenant further advised that he notified the Landlord 6 months ago that his hot water was in issue, which he says was again ignored. Finally, the Tenant says that he notified the Landlord 2.5 years ago that his fridge was not working, which he says was also ignored.

P.C. and B.S. both advise that the Tenant never notified them about repairs to the hot water, stove, and fridge. Curiously, however, B.S. mentioned an incident in which he attended the rental unit with police officers and says that repairs could not be completed as the Tenant refused further access to the Landlord. B.S. was not clear on what those repair issues were nor did he explain when the incident took place.

To be clear, under s. 32 of the *Act* landlords have an obligation to maintain a 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, make it suitable for occupation for a tenant. Generally, tenants

are expected to, at first instance, notify a landlord of a repair issue such that the landlord may undertake the repairs if necessary. Should the landlord fail to do so, a tenant may seek an order for repairs and a rent reduction proving the Landlord breached s. 32 of the *Act*.

In this instance, the Tenant provided wide ranging submissions which were both generalized and veered to the bizarre, including an allegation that the Landlord was spying on him and that the Landlord, somehow, adversely affected his professional work relationships. I attempted to keep the Tenant focused on the claims stated in his application. What I received were generalized submissions devoid of specificity one might expect in these types of claims.

I am told by the Tenant that the repair issues were all communicated orally to the Landlord. However, the Landlords deny this, though there was some acknowledgment by B.S. of some repair issues that could not be addressed due to the Tenant refusing access to the rental unit.

It bears consideration that this is the Tenant's claim. He bears the onus of proving it. In this instance, I find that I have insufficient evidence to show when these repair issues were first communicated to the Landlord, nor do I have sufficient evidence to support a finding that the Landlord breached s. 32 of the *Act*.

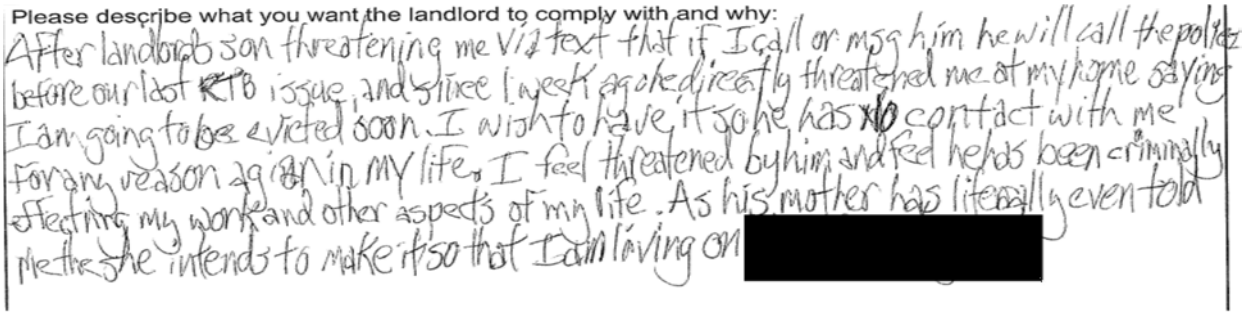
The Tenant also made general allegations of breach of quiet enjoyment, which could conceivably result in a rent reduction claim under s. 65. However, s. 28 of the *Act* protects tenants from unreasonable disturbances. In other words, a tenant cannot expect to be free from any disturbance from the other occupants of a residential property. Further, in older buildings, noise is prone to travel between rental units. Landlords are not under a general obligation to soundproof each rental unit from each other without regard to the age and character of the property. I find that the Tenant has also failed to prove a breach of s. 28 of the *Act*.

I find that the Tenant has failed to prove his claim for a rent reduction. I dismiss it without leave to reapply.

Should the Landlord be Ordered to Comply?

Pursuant to a s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement.

The Tenant's application describes his claim as follows:


Please describe what you want the landlord to comply with and why:
After landlords son threatening me via text that if I call or msg him he will call the police before our last RTB issue, and since last week spoke directly threatened me at my home saying I am going to be evicted soon. I wish to have it so he has no contact with me for any reason going forward in my life. I feel threatened by him and feel he has been criminally effecting my work and other aspects of my life. As his mother has literally even told me that she intends to make it so that I am living on [redacted]

I have redacted identifying information in the interest of the parties' privacy.

At the hearing, the Tenant did not make specific requests under this portion of his application such that it was unclear the relief sought. Landlord's counsel also raised concerns with respect to this claim in that it lacked any level of specificity such that it was difficult to respond. Review of the application shows that, though broad, the claim is related to general allegations of that the Landlords disturbed the Tenant's right to quiet enjoyment.

However, as noted above, the Tenant failed to demonstrate breach of s. 28, which is, by implication of s. 62, a prerequisite to granting an order that the Landlord comply with the *Act*. As the Tenant has failed to prove this, I also dismiss this claim without leave to reapply.

Conclusion

I dismiss the Tenant's claims under ss. 65 (rent reduction) and 62 (order that the landlord comply) of the *Act* 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: May 26, 2023

Residential Tenancy Branch