



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ERP MNDC RR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied for an order requiring the Landlord to make repairs to the rental unit, a monetary Order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, and for authorization to reduce rent for repairs, services, or facilities agreed upon or not provided. It is apparent in the Application that the Tenant believes the Landlord is accessing her rental unit without lawful authority, therefore the Tenant's application was amended to include an application to suspend or set conditions on the Landlord's right to enter the rental unit and an application to change the locks on the rental unit.

The Tenant stated that she personally served the Landlord with copies of the Application for Dispute Resolution and Notice of Hearing on November 23, 2008. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided is whether the Tenant is entitled to an Order requiring the Landlord to make repairs to the rental unit; to an Order setting conditions on the

Landlord's right to enter the rental unit; and a monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act), Regulation*, or tenancy agreement. Specifically, the Tenant is seeking compensation for loss of quiet enjoyment due to disruptions caused by the Landlord and for living in a rental unit that is in need of significant repairs.

Background and Evidence

The Tenant stated that this tenancy began on July 01, 2008; that they pay monthly rent in the amount of \$650.00; and that utilities are included with their rent.

The tenant A stated that a pipe in the ceiling above the kitchen started to leak on, or about, October 18, 2008. She stated that they placed buckets on the floor to catch the water, which had to be emptied several times per day. She stated that she advised the Landlord that the pipes were leaking on October 27, 2008. She stated that the leak was a significant inconvenience, as they had to repeatedly empty buckets, mop the floor, and they could not wash dishes in the kitchen sink after they had diverted the leaking water to their sink.

The tenant B stated that he temporarily repaired the leak after it had been leaking for approximately one week by diverting the water from the leaking pipe to their kitchen sink. He stated that the leak was repaired by the Landlord sometime near the end of October of 2008.

The tenant A stated that the carpet in the rental unit became saturated by water that was leaking from the ceiling. She stated that they made reasonable efforts to dry the carpets but they have become stained and are in need of cleaning. The Tenant submitted photographs that establish that the carpets are in need of cleaning. The

tenant A stated that the carpet was cleaned at the beginning of the tenancy and she would like it restored to the condition it was in prior to the leak.

The tenant A stated that the storage area under the stairs in their rental unit is not useable due to the mildew in the room. She stated that the room can be smelled throughout her rental unit. She stated that they noticed the problem a few days after the tenancy began, at which time they advised the Landlord, who paid them to clean the storage area. She stated that they removed drywall from the storage area but that the room continues to smell. She stated that the timber in the area needs to be replaced, the area needs to be ventilated, and the room needs to be sprayed with something that will eliminate the odor. The Tenant submitted photographs of the storage area that supports her testimony that the room is damp and not suitable for storage purposes.

The tenant A stated that they placed the drywall that they removed from the storage area outside of their rental unit, and that the Landlord has not yet disposed of it. The Tenant submitted a photograph of the drywall that was removed from the storage unit. The Tenant stated that the drywall restricts access to their rental unit as it is piled outside of their front door.

The tenant A stated that the cupboard under the sink is mouldy and decaying. She noticed the problem in the cupboard at the beginning of the tenancy and she verbally advised the Landlord of the problem on several occasions, however he has not repaired the problem. The Tenant submitted a photograph of the interior of the cupboard, which establishes that there is a significant moisture problem.

The tenant A stated that a toilet in the rental unit does not work properly and that it needs to be cleared with a plunger every second time it is used. She states that the toilet bubbles whenever water is allowed to run in the bathroom sink, which she contends is further indication of a problem. She stated that she has reported the

problem to the Landlord on several occasions and he gave her a loonie and told her to buy a plunger.

The tenant A stated that the heat in the rental unit is controlled by the Landlord, as they do not have a thermostat in their rental unit. She stated that the rental unit is very cold and that they use a space heater, which they own, and the oven to help to heat the rental unit. She requested an Order requiring the Landlord to provide them with a thermostat that allows them to regulate the temperature in their rental unit or to provide them with five space heaters, with which they can heat their rental unit.

The tenant A stated that the Landlord regularly enters the rental unit without permission. She stated that the Landlord lives in the upper portion of the house and her rental unit is in the lower portion of the house. She stated that their residences are separated by a door at the top of the stairs leading from the upper portion of the house to the rental unit. She stated that she does not have the ability to lock this door from her side of the door.

The tenant A stated that at approximately 11:15 p.m., sometime near the end of October of 2008, she was watching television, when the Landlord walked down the stairs inside of her rental unit. She stated that the Landlord did not knock or ask permission to enter the rental unit, and that he was upset that the Tenant had too many lights on.

The tenant A stated that on another occasion, in September or October, the Landlord's son entered the rental unit through the stairs that join the two residences, without knocking. She stated that the son attend the rental unit for the purpose of delivering mail to the Tenant.

The tenant A stated that on December 27, 2008 she was outside of her rental unit when the Landlord asked for permission to enter the rental unit for the purposes of viewing her Christmas tree. She stated that she told him he could not enter her rental unit but he pushed past her and entered the unit. She stated that he remained in the rental unit for approximately ten or fifteen minutes, at which time they discussed issues related to the tenancy.

Analysis

In the absence of evidence to the contrary, I find that the Landlord has accessed the rental unit without lawful authority on more than one occasion. I hereby authorize the Tenant to install a lock on the door that joins the rental unit with the Landlord's residence. The Tenant is not required to provide the Landlord with a key to this lock until the tenancy ends, at which time the Tenant must provide the Landlord with all keys to the lock. I further authorize the Tenant to reduce their next monthly rent payment by the price of installing the lock, provided that they present a copy of bill for replacing the lock to the Landlord prior to reducing their rent.

I hereby Order that the Landlord must not enter the rental unit except in the following circumstances:

- at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that advises the Tenant the purpose for entering, which must be reasonable; and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees
- an emergency exists and the entry is necessary to protect life or property.

I find that the unlawful entries did interfere with the Tenant's right to the quiet enjoyment of their rental unit. I arbitrarily determine that the Tenant should be compensated for being disturbed by the unlawful entries, in the amount of \$100.00.

The evidence provided by the Tenant shows that water was leaking from the ceiling for approximately nine days before they notified the Landlord of the problem. The evidence provided by the Tenant shows that the Landlord repaired the problem within approximately three days of being notified of the problem. I find there is no need for an Order requiring the Landlord to repair the leak, as it has already been repaired.

Although I accept that the leak in the ceiling caused an inconvenience for the Tenant, I do not find that they are entitled to compensation for that inconvenience as they did not notify the Landlord of the problem in a timely manner. I find that the Landlord repaired the leak within a reasonable time after being notified of the problem, and that the Tenants are not entitled to compensation for the minor inconvenience of working around the leak for a period of three days. In reaching this conclusion I was strongly influenced by the fact that the Tenants lived with the inconvenience for over nine days before they notified the Landlord of the problem, which indicates that the inconvenience could not have been that severe.

In the absence of evidence to the contrary, I find that the carpet in the rental unit requires cleaning as a result of the leak in the ceiling. I find that the carpet was damaged when the ceiling leaked and that the Tenants are entitled to have the carpet restored to the condition it was in before the leak. I hereby Order the Landlord to have the carpet in the rental unit cleaned prior to January 31, 2009. In the event that the Landlord fails to clean the carpet prior to January 31, 2009, I hereby authorize the Tenants to have the carpet cleaned; to present a copy of the carpet cleaning bill to the Landlord; and to reduce their next monthly rent payment by the amount of the carpet cleaning. I decline to award the Tenant compensation for living with a dirty carpet for a

period of three months, as I do not find the inconvenience was significant enough to warrant financial compensation.

In the absence of evidence to the contrary, I find that the storage area in the rental unit is not useable due to the fact that it is damp and that it smells, which reduces the value of the tenancy. I find that the smell from the storage area permeates the rental unit and further reduces the value of the rental unit. I arbitrarily determine that the condition of the storage area devalues the tenancy by \$25.00 per month. I hereby authorize the Tenant to reduce their next monthly rent payment by \$200.00, as compensation for living with the substandard storage area between July 01, 2008 and February 28, 2009. I further authorize the Tenants to reduce their monthly rent payment by \$25.00 each month, commencing on March 01, 2009, until such time as the smell emanating from the area is eliminated.

In the absence of evidence to the contrary, I find that the cupboard under the kitchen sink is damaged by moisture, which reduces the value of the tenancy. I arbitrarily determine that the condition of the storage area devalues the tenancy by \$5.00 per month. I hereby authorize the Tenant to reduce their next monthly rent payment by \$40.00, as compensation for living with the substandard cupboard between July 01, 2008 and February 28, 2009. I further authorize the Tenants to reduce their monthly rent payment by \$5.00 each month, commencing on March 01, 2009, until such time as the cupboard under the kitchen sink is replaced or repaired.

In the absence of evidence to the contrary, I find that one of the toilets in the rental unit regularly needs to be repaired by the Tenant, which reduces the value of the tenancy. I arbitrarily determine that the problem with the toilet devalues the tenancy by \$5.00 per month. I hereby authorize the Tenant to reduce their next monthly rent payment by \$40.00, as compensation for living with the malfunctioning toilet. I further authorize the

Tenant to reduce their monthly rent payment by \$5.00 each month, commencing on March 01, 2009, until such time as the toilet in the rental unit is replaced or repaired.

In the absence of evidence to the contrary, I find that the Tenants do not have the ability to regulate the heat in their rental unit, and that the Landlord does not keep the heat at a temperature that makes the rental unit reasonably habitable, as is required by section 32 of the *Act*. I therefore Order the Landlord to provide the Tenant with the ability to control the temperature in the rental unit, either by providing them with the means of controlling the existing heat source in their rental unit or by supplying them with five space heaters. In the event that the Landlord does not comply with this Order prior to January 31, 2009, I hereby authorize the Tenant to reduce their monthly rent payment by \$25.00 each month, commencing on February 01, 2009, until such time as the Landlord complies with this Order.

I arbitrarily determine that living without the ability to regulate the heat in the rental unit devalues the tenancy by \$25.00 per month during the cold months. I hereby authorize the Tenant to reduce their next monthly rent payment by \$100.00, as compensation for living without the ability to regulate their heat between October 01, 2008 and January 31, 2009.

I find that the Tenant provided insufficient evidence to establish that the drywall piled outside of their rental unit represents a contravention of the *Act*, that it reduces the value of their tenancy, or that it interferes with the quiet enjoyment of their rental unit. On this basis, I dismiss the Tenant's application for an Order requiring the Landlord to move the drywall and I do not find that the Tenant should be compensated for having the drywall piled at that location. In reaching this conclusion I was strongly influenced by the fact that the photograph submitted does not establish that the pile restricts the Tenant's access to the rental unit or that it renders the rental unit unsuitable for habitation. I was also strongly influenced by the fact that the drywall was placed in that

location by the Tenant, who has the option of moving it to a more convenient location on the rental property.

Conclusion

In summary, I have ordered that the Tenant can reduce their next monthly rent payment by \$480.00, which represents compensation for the following:

- \$100.00 for being disturbed by the Landlord entering the rental unit without lawful authority
- \$200.00 in compensation for living with a substandard storage area
- \$40.00 for living with a substandard cupboard
- \$40.00 for living with a malfunctioning toilet
- \$100.00 in compensation for living without the ability to regulate the heat.

In summary I have ordered that the Landlord make the following repairs:

- clean the carpet in the rental unit prior to January 31, 2009
- eliminate the smell emanating from the storage area in the rental unit
- repair or replace the cupboard below the kitchen sink
- repair the toilet so that it can be flushed without the need to regularly clear the lines with a plunger
- provide the Tenant with the ability to regulate the existing heat source in the rental unit, or supply five space heaters to the Tenant.

In summary, I have ordered that the Tenant may reduce future rent payment in the following manner:

- the Tenant may reduce one future rent payment by the amount it costs to have a lock installed on the door between the rental unit and the Landlord's residence

- the Tenant may reduce one future rent payment by the amount it costs to have the carpet in the rental unit professionally cleaned if the Landlord has not cleaned the carpet in the rental unit prior to January 31, 2009
- the Tenant may reduce the monthly rent by \$25.00 per month, commencing on March 01, 2009, until such time as the smell emanating from the storage area in the rental unit is eliminated
- the Tenant may reduce the monthly rent by \$5.00 per month, commencing on March 01, 2009, until such time as the cupboard below the kitchen sink is repaired or replaced
- the Tenant may reduce the monthly rent by \$5.00 per month, commencing on March 01, 2009, until such time as the toilet is repaired
- the Tenant may reduce the monthly rent by \$25.00 per month, commencing on February 01, 2009, until such time as the Tenant is provided with the ability to regulate the existing heat source in the rental unit or is supplied with five space heaters.

Dated: January 06, 2009