

Decision

Dispute Codes:
MNDC, RP, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed for repairs, recover the filing fee, an Order for the landlord to make repairs to the unit and clarification of the tenancy agreement obligations in regards to utilities.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009. The landlord was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, in documentary form, to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to a monetary claim for repairs she paid to have done to the rental unit
- Whether the tenant is entitled to an Order instructing the landlord to make repairs to the rental unit.
- Whether the tenant is entitled to recovery of the filing fee

Background and Evidence

The tenancy began May 1, 2008 with rent at \$1,800.00 per month payable on the 1st of each month. The tenancy agreement stipulates that water, electricity, and heat are included in the rent. A security deposit of \$850.00 was paid on April 1, 2008.

This is a multi unit home where the rental unit in question is one of three separate units contained in a house. All three tenants use the front door entrance into a common foyer area. Each rental unit is separated by a private locked door off of the main foyer, with their own kitchen and bathroom facilities.

The tenant testified that she is requesting a monetary claim to reimburse for the cost of replacing the combination lock to her private entrance door. She stated that the lock had been broken, falling out of the door, for approximately two years and the landlord refused to have it replaced. The combination lock was installed through two holes and when the landlord's maintenance person attended to replace the lock, he replaced it with a door handle lock which left one hole in the door. The tenant was not satisfied with the repair so she purchased a combination lock on her own and paid the maintenance person to install it.

The landlord advised that the tenant did not like the new lock provided by the landlord as it was not a combination lock, so the tenant went out and purchased her own lock.

The tenant was concerned that the landlord did not provide her with the address of where the landlord was residing, and listed the landlord's address on the tenancy agreement as being at the rental unit.

Both the tenant and landlord confirmed that the landlord comes to the rental unit to pick up her mail from the common area.

The tenant requested clarification of her tenancy agreement regarding payment of utilities. She testified that the landlord required her to sign a new tenancy agreement and pay a new damage deposit back on April 30, 2008. A copy of the new tenancy agreement was entered into evidence by the tenant and stipulates that water, electricity, and heat are included in the monthly rent. The tenant testified that even after the new agreement was signed, someone always shows up at her rental unit and bullies or threatens her until she pays the hydro and gas bills. She stated that the current agent for the landlord is the first agent that requested the payment in writing without threats of kicking her out of the rental unit.

The landlord stated that their copy shows a hand written statement that the tenant pays 2/3 of the hydro and gas bills, this notation is not initialed by either party, and that this new agreement was an extension of a previous tenancy agreement from 2004 in which the tenant was required to pay utilities.

The tenant requested clarification on if the landlord was allowed to scratch out of the tenancy agreement the part where the landlord is required to pay interest to the tenant on the security deposit, as done on the agreement submitted into evidence, under section 4(B)(1)(b) & (c).

The tenant is requesting that the landlord be ordered to repair her back door, the kitchen light, the stove, and her windows.

The landlord testified that repairs have been done to this rental unit which included replacing the washer, dryer, fridge and stove within the past year or two. The landlord advised that the lights in the kitchen are fluorescent lights and the tenant did not want it repaired as she would have to pay more for electricity.

In support of their testimony the landlord provided a name and telephone number of the maintenance person who has been hired on a regular basis to complete repairs at the rental unit.

The landlord requested information on how to amend or cancel the existing tenancy agreement so they could add a material term to have the utilities become the responsibility of the tenant.

Analysis

I find that in order to justify payment of losses under sections 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

There was no documentary evidence supplied in support of the tenant's monetary claim for losses so I find she was unable to meet the test for damage and / or loss claim.

The landlord has taken on a new advocate to assist her with her dealings at the rental property. I find the new advocate's intentions to be in the interest of bringing both the landlord and tenant to agreement on maintenance issues surrounding the rental unit and willing to assist the landlord with educating her on her requirements as a landlord under the *Residential Tenancy Act*.

In relation to the issue surrounding the landlord's mailing address, Section 13 of the *Residential Tenancy Act* stipulates that a tenancy agreement must set out the address for service and telephone number of the landlord or the landlord's agent. Based on the testimony there is a common area in the rental home where the landlord picks up her mail which is the address listed on the documentary evidence for the landlord. I find that the landlord has provided an address for service however has not complied with the act as there is not a telephone number listed for the landlord or her agent.

The landlord testified that she does not pay interest on security deposits and the tenant and landlord initialed crossing the interest requirement out of the tenancy agreement. I find that the landlord has contravened the *Residential Tenancy Act* section 5 by trying to contract out of the *Act*. The landlord does not escape the responsibility of paying interest on the security deposit she holds in trust for the tenant.

In relation to the tenancy agreement signed on April 30, 2008, I find that the tenancy commenced on May 1, 2008, is on a month to month basis, and that the monthly rent of \$1,800.00 includes the cost of water, electricity, heat, stove and oven, dishwasher, refrigerator, carpets, window coverings, laundry (free), and garbage collection. The landlord is required to keep the security deposit during the tenancy, pay interest on it in accordance with the regulation, and to repay the security deposit and interest to the tenant as specified in the *Residential Tenancy Act* and Residential Tenancy Regulation.

I caution the landlord in response to their question on how to amended or cancel this tenancy agreement to make the tenant responsible to pay the utilities, and advise the

landlord of their responsibility to ensure their actions fall within the *Residential Tenancy Act* and *Regulation*.

Both the tenant and landlord were unsure of their respective responsibilities for maintenance of the rental unit. I encourage both parties to become aware of their rights and responsibilities as regulated by the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the Residential Tenancy Policy Guidelines.

Conclusion

I HEREBY dismiss the tenant's application for a monetary order for money owed or loss with leave to reapply.

In the absence of documentary evidence I HEREBY dismiss the tenant's request to Order the landlord to make repairs to the unit, for other requests and to recover the filing fee, without leave to reapply.

March 31, 2009
Date of Decision

Dispute Resolution Officer