



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement; Orders to have the landlord repair the rental unit or property; authority to reduce rent for repairs, services or facilities agreed upon but not provided; and, recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the tenant has established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement.
2. Whether the tenant has established grounds to reduce her rent.
3. Appropriate Orders to the landlord for repairs to the rental unit and property.
4. Award of the filing fee.

Background and Evidence

Based on undisputed testimony of the parties I make the following findings. The parties executed a tenancy agreement on October 27, 2008. The rental unit was still under renovation when the tenant viewed the rental unit and agreed to rent it. The tenant was to get possession of the rental unit November 1, 2008 and pay rent of \$950.00 on the 1st

day of every month. The tenancy agreement has a fixed term ending on April 30, 2009. Neither party provided a copy of the tenancy agreement as evidence.

The tenant claims she did not get possession of the rental unit until November 3, 2008 because she could not get keys from the landlord and the tenant moved in on November 8, 2008. The landlord disputed the tenant's statement and testified that the tenant did not contact him for the keys until after November 1, 2008.

The tenant is claiming compensation of \$200.00 per month for repairs and maintenance or services or facilities not provided by the landlord, including:

- Inadequate hot water supply – hot water runs out after 3 minutes
- Heat that is uncontrollable in the rental unit
- Malfunctioning fridge and stove -- replaced in late December 2008
- Bedroom window that rattles
- Missing smoke detector
- Damaged door frame
- Gaps in flooring
- Unfinished bathroom cabinet
- Coin operated laundry instead of free laundry
- Infrequent garbage collection
- Dirty and unkempt common areas
- Door to building is not secure

During the hearing, the tenant was of the position that the landlord should remedy the above issues as follows: install new faucets in the rental unit to improve the supply of hot water, install a working thermostat to control heat in the rental unit, install a new bedroom window, install a smoke detector, repair to rental unit door frame, have the flooring installer return to fix the gaps in the flooring, repair or replacement of the

bathroom cabinet, the provision of free laundry facilities, better upkeep of the common areas and more frequent garbage collection.

The tenant provided evidence that she had notified the landlord about many of the repair issues verbally, on November 4, 2008, and in a letter dated November 21, 2008. On January 6, 2009 the tenant made this application.

As evidence for the hearing, the tenant provided several photographs. The photographs show gaps between the new flooring and the walls, the bathroom cabinet, a hole in the drywall, dirty carpets in the hallways, over-flowing garbage bins, parking stalls and exterior views of the building. The tenant also included photographs taken of other rental units in the building.

The landlord testified that the landlord has had difficulty gaining the tenant's consent to access the rental unit since the tenant insists on being present when the manager or landlord's contractors want to make repairs and the tenant works until 6 pm. The landlord responded to the tenant's submissions as follows. The fridge and stove were in working order at the beginning of the tenancy and were replaced at the end of December 2008. There are gaps in the flooring and the tenant was provided with the contact information of the flooring contractor so that she can arrange a time for the contractor to come in and finish the flooring. The rental unit has been supplied with adequate heat after having the heating system repaired and the tenant's complaints about heat are with respect to not having a controller in the rental unit. The windows rattle in the wind but the windows can not be repaired as the windows are old and replacement parts are difficult to locate and the landlord does not believe that a new window needs to be installed simply because the window rattles in the wind. The landlord was not aware that there was not a working smoke detector in the rental unit. The landlord plans on repairing the bathroom cabinet but has not done so to date due to difficulty gaining permission to enter the rental unit. The landlord explained that the

common hallways are at times strewn with construction debris as many units are under construction which has also lead to the garbage bins becoming full more quickly.

The landlord objected to the tenant providing photographs of other units as evidence for this hearing. The parking stalls shown in the photographs are for landlord's use. Finally, the landlord denied that the tenancy agreement provides the tenant with free laundry services.

I heard that the landlord has previously offered the tenant the rental unit directly below the rental unit as it is a better unit and has been more extensively renovated. The landlord also suggested the parties mutually agree to end the tenancy. The tenant has reject the landlord's offers, stating that she would still have many of the same issues in the unit below hers and the unit below hers is not a top floor unit. The tenant is of the position that she should not have to move because of the landlord's failure to provide repairs and services required of the landlord.

Analysis

The Act requires the landlord maintain the rental unit and 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, makes it suitable for occupation by a tenant.

The Act provides that if it is shown that a landlord has not complied with the Act, the regulations or a tenancy agreement, the landlord may be ordered to comply with the Act, regulations or tenancy agreement, and that past or future rent may be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

The Act provides that a landlord may gain access to a rental unit in order to conduct repairs upon giving the tenant proper notice to enter. The tenant cannot prohibit the

landlord from entering the rental unit for lawful purposes where proper notification has been provided. Section 29 of the Act provides that proper notification is:

b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees

In this case, I am satisfied that the tenant has insisted that she be present when the landlord wants to gain access to make repairs; however, this is not a right of the tenant under the Act. I also find the landlord has not given the tenant a Notice to Enter in order to conduct repairs. I also find that it is not the tenant's obligation to contact the flooring contractor and arrange a time for the contractor to finish the flooring. Rather, the landlord must set up an appointment for the contractor to finish the flooring and give the tenant proper notification of entry.

Upon consideration of all the evidence before me, I have considered the issues raised by the tenant and make the following determinations with respect to her rental unit or the common property. As the tenant was informed at the hearing, this decision does not pertain to the condition of other rental units in the building.

Inadequate hot water supply – hot water runs out after 3 minutes

The landlord shall have the bathroom plumbing fixtures inspected and repaired so that the tenant is provided with a constant supply of hot water.

Heat that is uncontrollable in the rental unit

The tenant is entitled to an adequate supply of heat so that the rental unit is inhabitable. Individual thermostats are not necessarily required in order to provide heat. I am satisfied that the tenant has been provided with inconsistent

heat and the landlord has had the central heating system serviced. However, the landlord must ensure that the heating system continues to provide the rental unit with sufficient heat. A measure of sufficient heat would be normal room temperature, which is 70 F or 21 C.

Malfunctioning fridge and stove -- replaced in late December 2008

I am satisfied that the tenant is to be provided with a working fridge and stove as part of her tenancy agreement. As this issue has been resolved, I make no order to the landlord.

Bedroom window rattles

I do not find sufficient evidence that the rattling window violates health, safety or building laws or that it makes the rental unit uninhabitable. I make no order with respect to the rattling window.

Missing smoke detector

The landlord is ordered to provide and install a working smoke detector in the rental unit forthwith.

Damaged door frame

I do not find sufficient evidence that the gouge in the door frame violates health, safety or building laws or that it makes the rental unit uninhabitable. I make no order with respect to the door frame.

Gaps in flooring

The testimony of the parties was consistent in that the flooring contractor needs to return to the rental unit to address the gaps in the flooring. The landlord is to set up a date for the contractor to return and give the tenant proper notification that the landlord and the contractor will be entering the rental unit for this purpose.

Unfinished bathroom cabinet

The landlord indicated that repairs or replacement were required to the bathroom cabinet but the landlord has had difficulty accessing the rental unit. As stated previously, the landlord may make repairs upon giving the tenant proper notification to enter the rental unit.

Coin operated laundry instead of free laundry

Without a copy of the tenancy agreement, I do not find that the tenant has established an entitlement to free laundry services.

Infrequent garbage collection, dirty and unkempt common areas

I accept the landlord's position that many of the rental units are undergoing repairs or renovations and that the common areas and the quantity of garbage generated have been affected. I find that this situation is likely to be of a temporary nature. The tenant confirmed that she is able to take her trash to the garbage bins. The landlord must ensure that the walkways and hallways are free from tripping hazards and other health hazards, but I do not find sufficient evidence of a violation of the health, safety or building laws and I make no order to the landlord.

Door to building does not operate properly

As the door to the building is intended to be a secured entry I am satisfied that is a service or facility to be provided to the tenant. The landlord shall repair the entry door so that it operates in a secure manner.

If the landlord has not already addressed the above issues since the date of the hearing, the landlord is ordered to make the repairs, as identified above, no later than March 31, 2009.

Monetary compensation

I am satisfied that the tenant has likely suffered a loss in the value of her tenancy due to insufficient hot water, inconsistent heat supply, gaps in the flooring, an unfinished bathroom cabinet and unsecured front door; however, the Act requires that a party who makes a monetary claim against another party to do whatever is reasonable to minimize the damage or loss. I am also satisfied that the tenant did not do whatever was reasonable to minimize her loss by insisting the tenant be present whenever the landlord or maintenance persons need to gain access to the rental unit. Therefore, I award the tenant one-half of the amount she is claiming for the months of November and December 2008. Since new appliances were provided in late December 2008 I further reduce the tenant's claims by one-half for the months of January and February 2009.

In light of the above findings, I provide the tenant with a rent abatement of \$100.00 for November 2008, \$100.00 for December 2008, \$50.00 for January 2009 and \$50.00 for February 2009. As the tenant was partially successful in establishing the landlord has failed to adequately maintain the rental unit, I award the tenant one-half of the filing fee. The total award to the tenant is \$325.00 including the filing fee and the tenant is authorized to reduce a subsequent month's rent by \$325.00 in satisfaction of this award.

If the landlord does not comply with the orders to repair the rental unit by March 31, 2009 the tenant is at liberty to make another application for further monetary compensation.

Conclusion

The landlord is ordered to provide repairs to the rental unit as described above. The tenant is awarded a rent abatement for rent paid for the months of November 2008 through February 2009 and the tenant is authorized to reduce a subsequent month's rent by \$325.00 in satisfaction of this award.

March 5, 2009

Date of Decision

Dispute Resolution Officer