



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, LAT, RP, RR, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for an Order that he be given access to the rental unit, that the Landlord make repairs and that the Landlord comply with the Act. The Tenant also applied for a monetary order for compensation for damage or loss under the Act or tenancy agreement as well as the filing fee for this proceeding and for an order that he be permitted to reduce his rent for repairs, services or facilities agreed to but not provided.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on November 1, 2006. Rent is \$1,200.00 per month which includes utilities and storage. The Tenant said the Landlord purchased the rental property on February 1, 2009 and on that day advised him that renovations would be starting the following day. In particular, the Tenant said the Landlord decided to remove a staircase that went from the lower unit to the upper unit and to erect a wall instead. A door was also added to retain the Tenant's storage area.

The Tenant claimed that the renovations took 9 days. The Tenant said that after the first day of renovations, he noticed that a dust barrier had not been put up and everything in the rental unit was covered in dust. The Tenant said he spoke to the workmen about it but they said they could not put up a dust barrier. The Tenant said he then spoke to the Landlord who said there was nothing she could do about it. The Tenant argued that he should be refunded his rent for the 9 days in question (or \$400.00) because during that time the unit was rendered practically useless because everything was covered in dust and boxes that had been stored under the stairs were crowding his living space.

The Tenant also claimed that once the construction was completed he spent a total of 24 hours over 3 days cleaning dust from everything including the carpets, drapes, clothes and a stereo which had to be disassembled. Consequently, the Tenant sought \$480.00 for his time to clean the rental unit.

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The Tenant also claimed that the Landlord asked him to remove his belongings from a storage area under the deck. The Tenant said he had a verbal agreement with the previous owner to share this storage area with him. Consequently, the Tenant sought \$300.00 for the loss of use of this storage area. The Tenant also claimed that the light by his front door was not working for approximately 2 months. The Tenant said the Landlord refused to fix the light until he agreed to sign a new tenancy agreement, but admitted that it was fixed on or about March 25, 2009 even though he did not sign a new agreement. The Tenant sought \$20.00 for this part of his claim.

The Landlord claimed that when he told the Tenant workers would be going into his rental unit to start renovations, he said “no problem.” The Landlord argued that the workmen spent only 3 days in the rental unit area removing the stairs and erecting a wall. He claimed that the workers only had to return to the rental unit thereafter to access the electrical panel because the breakers kept tripping and to cut a hole in the kitchen ceiling in order to redirect a gas or water line. The Landlord argued that throughout the renovations, the Tenant had the full use of the rental unit.

The Landlord claimed that as a result of the renovations, the Tenant’s storage space was enlarged to approximately double its previous size. The Landlord admitted that the Tenant approached him about a dust barrier not being erected but said the workmen advised him that the area was too small to do so. The Landlord said he advised the Tenant he would pay to have a house cleaner come in to clean up the dust once the construction was done but the Tenant declined his offer. The Landlord said the Tenant never advised him that he would be doing the cleaning himself and then seeking to recover the cost. The Landlord argued that the amount sought by the Tenant for cleaning was unreasonable given that it took a house cleaner only 4 hours to clean the upper suite.

The Landlord admitted to asking the Tenant to remove items from under the deck because he wanted to store a lawnmower but when the Tenant protested about it, he assumed the Tenant would continue keep his belongings stored there. With respect to the Tenant’s front door light, the Landlord claimed that he didn’t know it was a problem for the Tenant until March of 2009 when he filed his application. The Landlord said the light was replaced in late March, 2009 after having a repair person look at it on two previous, separate occasions to determine the problem.

Analysis

I find on a balance of probabilities that the Tenant did not suffer a loss of use of the rental unit for 9 days. The Tenant’s evidence was that he lived in the rental unit during the renovations and that his use and enjoyment of it was affected by having to clean dust from the construction and manoeuvre around boxes for 9 days. While this may

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have been an inconvenience, I find that this was not an unreasonable or significant interference with the Tenant's use of the rental unit. Another option available to the Landlord would have been to end the tenancy by serving the Tenant with a 2 Month Notice so she could have vacant possession of the rental unit while she did the renovations. Consequently, this part of the Tenant's claim is dismissed.

Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a party who suffers damages must give the other party notice of the damages and a reasonable opportunity to correct the situation or mitigate the damages. In this case, I find that the Landlord offered to have the rental unit cleaned of the dust following the construction but the Tenant refused that offer. As a result of the Tenant's failure to mitigate these damages, I find that he is not entitled to compensation for cleaning expenses and this part of his claim is dismissed.

I find that there is insufficient evidence to support the Tenant's claim that he lost storage space that was provided to him under the tenancy agreement. I find that the storage area that was originally under the stair case and then renovated into a storage space was the storage area agreed to be provided under the tenancy agreement. The Tenant's evidence was that the previous Landlord verbally agreed to share the storage area under the deck with him. Consequently, I find that the Landlord (or new owner) had no obligation to provide this area to the Tenant for storage in addition to the storage area inside the rental property. The Tenant admitted that the newly constructed storage area was enlarged by taking out the stairs in any event.

I also find that there is insufficient evidence to support the Tenant's claim for compensation due to the Landlord's failure to repair a light over his front door. While a Landlord has a duty under s. 32 of the Act to make this kind of repair, I find that the she took steps to investigate the problem as early as February, 2009. Furthermore, I find that the fact that the light was not replaced until March 25, 2009 was not a significant delay. In any event there was another light in that part of the rental property that was operational that would have shed light on the Tenant's front entrance.

Conclusion

The Tenant's application is dismissed. 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 05, 2009.

Dispute Resolution Officer