



Dispute Resolution Services

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

Decision

Dispute Codes: RR

Introduction

This hearing dealt with the tenant's application for a reduction in rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the hearing and gave affirmed testimony.

Issue to be decided

- Whether the tenant is entitled to a reduction in rent

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on November 1, 2007. Rent in the amount of \$596.00 is payable on the first day of the month, and a security deposit of \$287.50 was collected at the start of tenancy.

Relatively recent problems identified in the unit consist principally of leaking faucets in the bathroom tub and sink, paint peeling from the bathroom ceiling, several holes cut into the drywall in the main living area of the unit required to investigate a water leak, as well as the smell of second hand smoke and increased noise from the adjacent unit pending repairs to the holes in the drywall.

The tenant liaised mainly with the resident caretaker in regard to remedying these concerns, and met more formally in person with the landlord's agent on March 30, 2009. In a follow-up e-mail dated March 31, 2009 to the landlord's agent after the meeting, the tenant identified the problems and summarized the period of time during which they existed, in part, as follows:

Approximately 9 months with constantly leaking bathtub fixture

Approximately 5 months with constantly leaking bathroom sink fixture

4 months paint peeled off of bathroom ceiling

2 months drywall cut out of living room leading to:

- 1) severe inconvenience of unsightly mess and unorganized living room
- 2) neighbour smokes and the stench permeates my living room
- 3) no insulation and neighbour's kitchen cupboards of pots and pans are very noisy.

The landlord's agent responded to the concerns set out above by e-mail dated April 1, 2009. In part, she noted that attempts (albeit unsuccessful) had been made to repair the bathtub faucet during the alleged 9 month period of "constant leaking." The landlord's agent also claimed that the tenant's e-mail was the first formal notification of a problem with the bathroom sink faucet. Further to commenting on paint and problems associated with holes in the drywall, the landlord's agent stated that the resident caretaker would be "working on the repairs immediately."

Analysis

There was no dispute between the parties as to the existence of the above problems and the landlord's agent offered apologies for the fact that they were not remedied more quickly. However, the parties held differing perspectives on the various levels of inconvenience arising from these problems and the appropriate quantum of remedy.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part, as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In the circumstances of this case, the repairs required did not preclude the tenant from being able to reside in the unit both, prior to the repairs being undertaken and during the time when they were being completed. In short, the unit was suitable for occupation.

However, I accept that there was annoyance related to the leaking faucets, a nuisance and an aesthetic defect arising from peeling paint in the bathroom ceiling, inconvenience and imposition arising from work associated with holes required to be cut in the drywall in the main living area of the unit, aggravation from the smell of smoke and an increase in noise entering into the unit from the adjacent unit pending repair to the drywall and, finally, painting required in the unit.

The length of time required to remedy each of the above problems varied. The faucets were repaired relatively quickly after the landlord's agent was formally notified of the problem, while completion of other repairs took longer. I note that repairs have now been done with the exception of painting in the main living area of the unit, which has still not yet been completed.

The landlord's agent identified delays arising, in part, from the limited time available to the resident caretaker, and a budget for building maintenance and repairs which is not unlimited.

Residential Tenancy Policy Guideline # 6 speaks to Right to Quiet Enjoyment, and provides, in part:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or

the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

In the result, after considering the documentary evidence, including pictures submitted into evidence by the tenant, in addition to the testimony of the parties, I find that the tenant has established entitlement to a reduction in rent in the amount of five (5) weeks rent, which I calculate to be \$687.70. This is calculated as follows:

$$\$596.00 \text{ (monthly rent)} \times 12 = \$7,152.00 \text{ (yearly rent)}$$

$$\$7,152.00 \text{ (yearly rent)} \div 52 \text{ (number of weeks in a year)} = \$137.54 \text{ (weekly rent)}$$

$$\$137.54 \times 5 \text{ (number of weeks compensation)} = \$687.70$$

Conclusion

Following from all of the above and pursuant to section 67 of the Act, I hereby authorize the tenant to withhold payment of the next regularly scheduled payment of monthly rent in the amount of \$596.00 (September 2009), and subsequently, to withhold \$91.70 from the following regularly scheduled payment of monthly rent (October). The balance of rent owed for October is therefore \$504.30 (\$596.00 - \$91.70).

DATE: August 14, 2009

Dispute Resolution Officer