



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNER, MNDC, ERP, RP

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$4506.00 and a request for an order to have the landlord make repairs to the rental unit.

It is my finding however that any portion of this claim is already been dealt with in a previous hearing and therefore cannot be heard again. Therefore the claim for \$1204.00 for loss of use and enjoyment for the months of June 2009 and July of 2009 is dismissed.

I deal with the remainder of the claim below.

Background and Evidence

The applicant testified that:

- When he moved into his rental unit, kitchen facilities were to be included in the rental unit however this was inadvertently omitted from the tenancy agreement.

- He has not had the use of the kitchen facilities for 24 months and therefore wants \$100 .00 per month off the rent for a total of \$2400.00.
- He has also had to replace the refrigerator in his rental unit and therefore he wants to be reimbursed \$380.00 for the cost of the refrigerator, although he admits he does not have a receipt for this refrigerator.
- It is his belief that the landlord did not act promptly to enforce an Order of Possession against two disruptive tenants and as a result he suffered loss of use and enjoyment of the rental unit for the month of August 2009 and therefore he believes he should be reimbursed the full \$602.00 rent for August 2009 .
- There and numerous repairs needed to the rental property, both in his own private rental unit, and in the common areas and therefore he is requesting an order for the landlord to make those repairs.

The respondent testified that:

- This is a rooming house and kitchen facilities are supplied in a common area and not in the applicant's private room.
- Although there is a fridge and stove in the tenant's rental unit, the tenancy agreement specifically excludes fridge and stove as they are not supplied with the rental, and the tenant was aware of that when he rented the unit.
- They do not believe they should have to pay for loss of use of enjoyment for the month of August 2009 as they took all reasonable steps to evict the disruptive tenants, and the delays were only because of having to follow due process. The disruptive tenants did not cooperate, did not follow orders that were served on them, and eventually the landlord had to have a Bailiff physically remove them and their belongings.
- Being an older building there are always repairs ongoing and the landlord is fully willing to do repairs that are required.

Analysis

Kitchen facilities

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is my finding that the tenant has not met the burden of proving that kitchen facilities were to be supplied in his private rental unit. Although the tenant claims that there was an agreement that the landlord would supply kitchen facilities, the landlord claims that that is not true and the tenancy agreement supports the landlords claim.

Therefore I will not allow the tenants claim for loss of use of kitchen facilities or for the cost of refrigerator replacement.

Loss of use and enjoyment

I also deny the tenants claim for loss of use and enjoyment. I have looked at the timeline provided in the evidence from the landlord and it is my finding that the landlord took reasonable steps to evict and remove the disruptive tenants as quickly as possible. It can be very difficult to remove tenants who are not being cooperative as there are numerous steps to take to move through the legal process and although I'm sure the presence of these tenants was disruptive for the applicant is my decision that the landlord cannot be held liable for the applicant's loss of use and enjoyment.

Request for repairs

It is also my decision that the applicant has not met the burden of proving that the landlord is failing to do repairs that are required in the rental unit. Although the applicant claims there are numerous repairs that need to be done he has provided little evidence to support

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that claim. The applicant has provided some photo evidence however the landlord claims to be doing ongoing repairs and since a lot of the damage claimed was caused by the disruptive tenants that have only just recently been removed from the building; I'm willing to give the landlord more time to complete the repairs before issuing any order.

Conclusion

All the applicants' claims except for the request for repairs are dismissed without leave to reapply.

The applicants request for a repair order to the kitchen facilities in his private unit is also dismissed without leave to reapply.

The applicants request for an order for repairs other than the kitchen facilities in his private unit is dismissed with leave to reapply.

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: September 17, 2009.

Dispute Resolution Officer