



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, MNSD, RR, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for moving costs, to reduce the rent for repairs, services or facilities agreed upon but not provided and a Monetary Order to recover the filing fee. The tenant also applied to cancel a Notice to End Tenancy however this was withdrawn at the outset as the landlord has not issued a notice. The tenant also applied for the return of her security deposit.

The tenant served the landlord by registered mail on September 14, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the Act with notice of this hearing. I also find the tenant sent the landlord the evidence package by registered mail on September 28, 2009. The landlord applied for an adjournment of today's hearing as he was overseas and did not have opportunity to gather his evidence. However, this request has been overturned as the landlord has had sufficient time to present his evidence and appoint an agent to act on his behalf.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to compensation for damage or loss under the Act?
- Is the tenant entitled to a rent reduction for repairs, if so, how much?
- Is the tenant entitled to the return of her security deposit?

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- Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy started on December 01, 2008. Rent for this rental property was \$1,400.00 per month due on the 1st of each month. This is a fixed term tenancy which expires on December 01, 2009.

The tenant testifies when she viewed the rental property at the end of October, 2008 it was incomplete but the landlord was carrying out extensive renovations which he assured her would be finished within one week after they moved in for the main floor renovations and two to three weeks for the basement renovations. The landlord told the tenant that there would be separate bathroom and kitchen facilities in the basement when it was completed which suited the tenants plan to operate a daycare from the premises. The laundry facilities were supposed to be installed in the garage but the tenant testifies this was impossible due to the extreme cold in the garage and has had to be relocated in the basement. The tenant has sent in a large amount of photographs detailing the ongoing repairs and renovations. These are taken with a daily newspaper to show the dates they were taken on.

To date the landlord has completed a few minor repairs and the tenants have undertaken some of the work themselves but the bulk of the work remains unfinished. There are electrical sockets uncovered; the wiring and plumbing is not up to code and the wires in the electrical box are incorrectly labelled; the bathrooms are not completed, the toilets do not flush properly; there is a leaking pipe and hole under the kitchen sink; there is a lack of instillation throughout the house causing extreme cold; The thermostat is broken; some of the doorways have no trim around the frames and across the floor; the hard wood floor is lifting and the tiles are not set correctly causing them to crack and pinch the tenants feet; the fridge does not work properly; there are holes in the dry wall; exposed instillation in the basement.

The tenants have provided numerous e-mails showing how many times they have contacted the landlord to arrange when he can complete the work and notify him of the outstanding repairs.

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The tenant testifies that the landlord did allow them to reduce their rent by \$100.00 from July, 2009 and they request that this reduction is backdated to the day they moved into the property in December 2008.

The tenant testifies that both her and her husband are disabled and are unable to move again without assistance. They moved into this rental property which was paid for by the National Defence on her husband's release from the forces. They had expected this to be a long term lease but now find that due to the continued stress and unfinished renovations they have been forced to live with that they must now move out. The tenant seeks any new moving costs in compensation from the landlord.

The landlord disputes the tenants' testimony. He states that the repairs are complete and the city came to inspect the property and gave him a permit for tenants to live there. The landlord claims the tenants have ripped up the carpet in the basement after telling the landlord there was a flood when it was the tenants' dog who had ruined the carpet. The landlord claims the tenant moved in and did not make any complaints for five months. The landlord claims the tenant gave him very tight time frames to do the work and these were not long enough for him to finish the work.

The tenant disputes this. The flood caused damage to the linoleum in the basement and the carpet was damaged by a bucket of the landlords' paint which spilled onto the carpet. The tenant testifies that she has given the landlord many opportunities to come and finish the renovations and do the repair work but to-date the above mentioned items remain outstanding.

Analysis

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

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

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(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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

From the substantial documentary evidence presented prior to today's hearing from the tenants and the testimony from both parties I find the landlord has not complied with section 32 of the Act. The landlord has not provided any evidence to support his claim that the renovations are complete. Therefore, I find in favour of the tenants claim to reduce the rent by \$100.00 per month backdated to December 01, 2008 to the amount of \$700.00 for the lack of repairs and services agreed upon but not completed by the landlord. As the landlord has agreed to this reduction from July, 2009 the tenants can continue to pay this reduced rent until either the renovation work is completed or they move from the rental property. Therefore, the rent is now reduced to \$1,300.00 per month.

I also direct the tenant and landlord to section 33 of the *Act* concerning emergency repairs and have enclosed information about these with my decision.

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I find the tenant has not provided sufficient evidence as to the actual costs she will incur if she has to move from the rental property and therefore dismiss this section of her claim with leave to reapply.

The tenant has requested an Order for the landlord to return her security deposit. The tenant and landlord agree that no move in condition inspection report was completed and therefore the landlord will be unable to make a claim against the security deposit for damages to the rental property pursuant to section 24(2) of the *Act*. However, I find as the tenant is still living at the rental property she is premature with this part of her claim and dismiss this section with leave to reapply.

As the tenant has been partially successful with her claim I find she is entitled to recover the \$50.00 paid to file her application from the landlord. A Monetary Order has been issued for the following amount:

Rent reduction from December, 2008 to July, 2009	\$700.00
Total amount due to the tenant	\$750.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$750.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenant to continue to pay the reduced rent of \$1,300.00 per month until such a time as the repairs are complete or she moves out of the rental property.

The remainder of the tenants' application is dismissed **with leave to reapply**



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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: October 13, 2009.

Dispute Resolution Officer