

DECISION

Dispute Codes RP RR

Preliminary Issues

The Landlord requested that the Tenant's evidence not be considered because the Landlord did not receive the Tenant's evidence until November 6, 2009.

The Tenant's legal advocate confirmed that he was assigned the Tenant's file in mid October 2009 and that he personally served the Landlord with the Tenant's evidence at approximately 11:00 a.m. on November 6, 2009.

The *Residential Tenancy Branch (RTB) Rules of Procedure* provides that the respondent must receive the applicant's evidence at least five days before the date of the dispute resolution hearing. In this case I find that the Landlord did receive the evidence in accordance with the (RTB) *Rules of Procedure*. In calculating the number of days prior to the hearing I note that November 6, 9, 10, 12, and 13 are five business days prior to the hearing and I note that the Landlord had the evidence an additional five non-business days prior to the hearing. Based on the aforementioned I accept that the Tenant's evidence was served and received by the Landlord in accordance with the RTB *Rules of Procedure* and the evidence will be considered in my decision.

The Landlord took issue to the Tenant requesting a repair to the base of the cupboard under his sink as the Tenant did not describe the cupboard in his details of dispute on his application.

The Landlord confirmed receiving copies of the Tenant's evidence along with photos of the stained flooring and damaged cupboard shelf which is located under the Tenant's sink.

As all parties received evidence of the damaged shelf located under the Tenant's sink and the Tenant's application lists that he is seeking an Order for the Landlord to make repairs to the unit, site or property, I allowed the testimony relating the cupboard in question and considered the Tenant's request for repair of the cupboard in my decision as listed below.

Introduction

The undisputed facts of the case are: the month to month tenancy began on approximately January 9, 2006 and the Tenant's rent is payable on the first of each month in the amount of \$313.00. A move-in inspection report was completed on

January 9, 2006 which notates that the kitchen floor shows signs of normal wear and tear and is stained.

The Tenant testified that he has requested that his kitchen linoleum be replaced for several years. The Tenant argued that the floor is discoloured and has black gouges in it. The Tenant claims that the floor is more than twenty five years old and that every year when the spring inspections take place, he requests that his floor be replaced.

The Landlord confirmed that the floor is 25 to 30 years old however it is only discoloured and does not need to be replaced. The Landlord argued that the discolouration of the floor is purely cosmetic and is not unsanitary or unserviceable. The Landlord stated that it is a "subsurface" stain which was present at the time the Tenant took possession of the rental unit.

The Tenant testified that the damage to the base of the cupboard in question was caused by water leaking from the old kitchen taps. The Tenant argued that the taps were replaced in July or August 2009 however the base to the cupboard underneath the sink was never replaced. The Tenant referred to his picture evidence in support of his testimony that the base of the cupboard suffered water damage, causing the board to rot, creating a foul odour, and has now collapsed. The Tenant argued that he has not been able to use the cupboard under the sink since about July 2009.

The Landlord testified that this was the first he had heard that the Tenant's cupboard was water damaged and causing an odour. The Landlord testified that he did not see any notes on the Tenant's annual inspection which referred to a damaged base in the cupboard under the sink.

The Landlord argued that he had spent over \$1,200.00 on the Tenant's cupboards earlier this year and referred to his documentary evidence of an invoice from the kitchen repair company. The Landlord contends that this damage was not present at the time the kitchen repair was being done and the Landlord feels that the damage was caused by the Tenant stepping on the base of the cupboard causing it to collapse.

The Tenant is seeking rent abatement in the amount of \$1,000.00 for the loss of use of the cupboard under the sink for the past few months.

Analysis

I find that in order to justify payment of damages or loss under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the

Act, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The Tenant is seeking an order to have the Landlord replace the kitchen floor, a floor that was marked and stained at the onset of the tenancy, as proven in the documentary evidence. Based on the testimony and evidence before me I find that the staining and black marks on the floor do not constitute a necessity to be replaced. Although the discoloration may not be appealing to look at and the color or style of the floor may be outdated, there is no breach of the *Act* on the part of the Landlord, as the floor is fully functional. Based on the aforementioned I find that the Tenant has failed to prove the test for damage or loss as listed above, and I hereby dismiss the Tenant's claim, without leave to reapply.

The evidence and testimony supports that there was an issue with the Tenant's kitchen taps whereby water was leaking from the taps and into the cupboard under the sink. The taps were replaced by the Landlord in approximately July 2009 however the base of the cupboard under the sink was not replaced. Based on the picture evidence I find

that the base of the cupboard, under the sink, has suffered water damage causing water stains, the board to be swollen from water absorption, and is now dislodged from the cupboard frame. In accordance with section 32 of the Act, the Landlord is required to complete the required repairs to ensure health, safety, suitability for occupation, and building standards are met. Based on the aforementioned I hereby Order the Landlord to repair the base of the cupboard under the kitchen sink in the Tenant's rental unit.

While a Landlord is required to repair and maintain the rental unit in compliance with the Act, the onus lies with the Tenant to keep the Landlord informed of required repairs. There is no evidence before me to support that the Tenant has informed the Landlord of the required repairs to the kitchen cupboard. I find that the Tenant has failed to prove the test for damage and loss, as listed above, and the Tenant is not entitled to rent abatement for not being able to use a damaged cupboard for a period of time where the Landlord was unaware of the required repairs.

Conclusion

I HEREBY ORDER the Landlord to have repairs completed to the base of the Tenant's cupboard located under the Tenant's kitchen sink.

I HEREBY DISMISS the Tenant's claim for rent abatement, without 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: November 17, 2009.

Dispute Resolution Officer