



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

DRI, MNDC, OLC, ERP, RP, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to dispute an additional rent increase; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, *Regulation*, or tenancy agreement; for authorization to reduce the rent for repairs, services, or facilities agreed upon but not provided; and to recover the cost of filing this Application for Dispute Resolution.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, on October 27, 2009. The Tenant submitted a copy of a Canada Post receipt with a tracking number that corroborates this statement. These documents are deemed to have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for damage to her property that resulted from a leaking roof; whether the Tenant is entitled to a rent reduction as a result of the leaking roof; whether there is a need for an Order requiring the Landlord to make repairs to the roof; whether the rent increase being imposed by the Landlord should be set aside; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that this tenancy began on January 01, 2008 and that she currently pays monthly rent of \$710.00.

The Tenant stated that the ceiling in her bedroom has been periodically leaking since February of 2008. She stated that it leaks primarily when it rains and the wind blows from the west. She stated that the water leaks through the ceiling light fixture and that

during an average rain storm she places a large roasting pan under the leak, which needs to be emptied every six to eight hours. She submitted photographs of the ceiling that corroborates her testimony that a significant amount of water has been leaking for some time.

The Tenant stated that she has verbally advised an agent for the Landlord of the leak on many occasions. She stated that she emailed the agent for the Landlord about the problem on, April 29, 2008, March 16, 2009, May 26, 2009 and October 23, 2009. The Tenant submitted copies of the word documents that she forwarded on those dates but she did not submit copies of the emails that were sent.

The Tenant stated that an agent for the Landlord advised her that sometime prior to the summer of 2009 a roofing company completed repairs to the roof; that the company had returned on several occasions to make additional repairs; and that when she spoke to the agent for the Landlord on December 06, 2009 he advised her that they were still attempting to rectify the problem.

The Tenant stated that she is tired of waiting for the roof to be repaired and she is seeking an Order requiring the Landlord to repair the leak in her ceiling and she is seeking a rent reduction for the inconvenience of living in a rental unit with a leaking ceiling.

The Tenant is seeking compensation, in the amount of \$700.00, for the cost of replacing her mattress. She stated that although she is still sleeping on her mattress it has stains on it from water that leaked through her ceiling. She did not submit any documentary evidence to establish the condition of the mattress nor did she submit any evidence to establish that it will cost \$700.00 to replace the mattress.

The Tenant is seeking compensation, in the amount of \$400.00, for the cost of refinishing an antique dresser, which she stated was damaged by water leaking from the ceiling. She submitted a photograph of a dresser that is not in good condition and, in my view, appears to have been in that condition for many years. She stated that the drawers on the dresser do not close properly since being damaged by water. She did not submit any documentary evidence to establish that it will cost \$400.00 to refinish the dresser.

The Tenant is seeking compensation, in the amount of \$200.00, for the cost of replacing a rug, which she stated smells as a result of being repeatedly soaked by water leaking from the ceiling. She submitted a photograph of the rug, which has no visible stains on it. She did not submit any documentary evidence to establish that it will cost \$200.00 to replace the rug.

The Tenant is seeking compensation, in the amount of \$100.00, for the cost of replacing her curtains, which she stated were stained by water leaking from the ceiling. She submitted a photograph of the curtains, which clearly establish that the curtains were stained. She stated that she has not attempted to clean the curtains and she does not

know if the stains will come out once the curtains are cleaned. She did not submit any documentary evidence to establish that it will cost \$100.00 to replace the curtains.

The Tenant submitted a copy of a Notice of Rent Increase that notifies her that her rent will be increased from \$710.00 to \$740.00, effective February 01, 2010. She contends that this increase is excessive, as it represents an increase of 4.2%.

Analysis

Section 32(1) of the Act requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that section 32(1) of the Act required the Landlord to repair the leak in the ceiling to ensure that it remains suitable for occupation.

I find that the leak in the ceiling constitutes a breach of the Tenant's right to the quiet enjoyment to her rental unit, as she has had to collect and dispose of water leaking into her rental unit; clean areas that have been soiled by the water; sleep in the living room whenever the water leaks onto her bed; and listen to the sound of dripping water. I find that the Tenant is entitled to compensation for the loss of the quiet enjoyment of her rental unit, in the amount of \$500.00. I find this to be reasonable compensation given the location of the leak, the period of time the ceiling has been leaking, that the Landlord has been aware of the problem for over a year.

I hereby Order the Landlord to repair the Tenant's ceiling prior to January 15, 2010. In the event that the Landlord has not repaired the Tenant's ceiling by January 15, 2010, I hereby authorize the Tenant to reduce her monthly rent payment for February of 2010 by \$100.00 and to reduce each subsequent monthly rent payment by \$100.00 until such time as the ceiling has been repaired. In the event that the Tenant's ceiling is damaged by continued problems with the leak in the roof after the ceiling has been repaired, I hereby authorize the Tenant to again reduce her monthly rent by \$100.00 for any month in which the ceiling is in a state of disrepair.

When making a claim for damages under a tenancy agreement or the Act, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or Act; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the absence of evidence to the contrary, I find that the Tenant's mattress was stained as a result of a leak in her ceiling. In addition to establishing that her property was damaged, the Tenant must also accurately establish the cost of repairing the damage to her property whenever compensation for damages is being claimed. In these circumstances, I find that the Tenant failed to establish the true cost of repairing or

replacing her mattress. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates her statement that it will cost \$700.00 to replace her mattress. On this basis, I dismiss the Tenant's claim for compensation for replacing her mattress.

In the absence of evidence to the contrary, I find that the Tenant's dresser sustained some damage as a result of a leak in her ceiling, although I cannot accept that the entire dresser needs to be refinished as a result of the leak. I find, however, that the Tenant failed to establish the true cost of repairing the damages to the dresser. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates her statement that it will cost \$400.00 to refinish the dresser. On this basis, I dismiss the Tenant's claim for compensation for refinishing her dresser.

In the absence of evidence to the contrary, I find that the rug smells as a result of the leak in her ceiling. I find, however, that the Tenant failed to establish the true cost of replacing the rug. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates her statement that it will cost \$200.00 to replace the rug. On this basis, I dismiss the Tenant's claim for compensation for replacing the rug.

In the absence of evidence to the contrary, I find that the curtains were damaged when the Tenant's ceiling leaked. I find, however, that the Tenant failed to establish the true cost of repairing or replacing the damaged curtains. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates her statement that it will cost \$100.00 to replace the curtains and that she did not establish the cost of repairing them by having them cleaned. On this basis, I dismiss the Tenant's claim for compensation for replacing the curtains.

Section 43(1)(a) of the Act stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which, for 2009, is 3.7%. As the proposed rent increase that is being imposed by the Landlord is 4.2%, which is greater than the amount that is calculated in accordance with the regulations, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(a).

Section 43(1)(b) of the Act stipulates that a landlord may impose a rent increase only up to the amount that has been ordered by the director on an application under section 43(3) of the Act. As I have no evidence that the Landlord has made an application under section 43(3) of the Act, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(b).

Section 43(1)(c) of the Act stipulates that a landlord may impose a rent increase only up to the amount that is agreed to by the tenant in writing. As I have no evidence that the

Tenant agreed to the proposed rent increase, in writing, I find that the Landlord does not have authority to increase the rent pursuant to section 43(1)(c).

On this basis, I find that the rent increase of \$30.00 that the Landlord is attempted to impose on February 01, 2010 is not valid as it does not comply with the legislation. I therefore find that the rent for this rental unit will remain at \$710.00 per month until it is increased in accordance with the legislation.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$550.00, which is comprised on \$500.00 in compensation for loss of quiet enjoyment that is directly related to a leaking ceiling and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations, I hereby authorize the Tenant to reduce her next monthly rent payment by \$550.00.

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: December 08, 2009.

Dispute Resolution Officer