



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

INTERIM DECISION

Dispute Codes:

MNDC, OLC, RP, LRE, LAT, RR

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application requesting compensation for damages or loss, that the landlord comply with the Act, make repairs to the rental unit, to suspend or set conditions on the landlord's right to enter the rental unit; to authorize the tenant to change the locks to the rental unit and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter(s)

The landlord's agent entered the hearing several minutes after it had commenced. During the first several minutes of the hearing the tenant had been affirmed and service to the landlord was discussed.

The landlord provided affirmed testimony that last night she submitted email evidence to the tenant's advocate. As this evidence was not served at least five days prior to the hearing, as required by Residential Tenancy Rules of Procedure, this evidence was not considered. The landlord is at liberty to provide oral testimony.

The tenant submitted late evidence to the Residential Tenancy Branch. This evidence consisted of correspondence between the landlord and tenant between January 19 and 21, 2010. As the parties had sent each other these documents I find that they are not prejudicial to either and have accepted the evidence for reference during this hearing.

The tenant submitted an amended Application which was served to the landlord within the required time-frames.

The tenant's Application for Dispute Resolution was amended, reducing the initial monetary claim of \$24,500.00 to \$12,875.59.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$12,875.59?

Must the landlord be ordered to comply with the Act and to make repairs to the rental unit?

Must conditions be set on the landlords' right to enter the rental unit?

May the tenant change the locks to his rental unit?

May the tenant reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy within a boarding house commenced on May 1, 2005. The tenant paid a deposit in the sum of \$220.00 on April 26, 2005. The tenant rents a room within a house and has use of a shared bathroom on the main floor and upper floor, plus use of a shared kitchen.

The tenant submitted a copy of the House Rules provided at the start of the tenancy, which state:

- 1) *No visitors after 1 pm;*
- 2) *Only persons paying rent are permitted to use laundry facilities;*
- 3) *Only persons paying rent are permitted to store items on the premises;*
- 4) *Guests are responsible to maintain the integrity and cleanliness of the house especially the common areas;*
- 5) *Guests must report all maintenance issues immediately;*
- 6) *If there are any complaints regarding other guests, complaints must be in writing and brought to the attention of rental agent.*

The tenant has made Application requesting the following repairs be made to the rental unit:

- 1) Repair the ceiling in the tenant's rental unit;
- 2) Repair the counter in the tenant's rental unit;
- 3) Restore or repair the fireplace in the tenant's rental unit;
- 4) Repair the bathroom floor on the 1st floor of the premises;
- 5) Repair/service the furnace;
- 6) Install and maintain functioning smoke alarms in the premises;
- 7) Employ reputable pest control company to address mouse infestation;
- 8) Repair fence;
- 9) Remove garbage from yard and perform general yard clean-up/maintenance.

The tenant has made the following claim for monetary compensation:

Landlord failure to maintain property – 1/5 of tenancy value	5,340.00
Loss of quiet enjoyment – 1/5 of tenancy value	5,340.00
Cost of replacement phone	396.59
	12,875.59

The tenant provided photographic evidence showing the need for repair to the rental unit ceiling. The landlord's agent testified that a recent attempt to assess repairs to the ceiling was stalled due to the tenant's unavailability at the rental unit during a scheduled visit. During the hearing agreement was reached on access to the rental unit for repair of the ceiling. The details of this agreement are included in my analysis.

The tenant testified that he currently has heat in his rental unit but that the common area and bathroom do not. The landlord's agent confirmed that another tenant has also recently informed her of the lack of heat in the common area and bathroom.

The tenant testified that when the tenancy commenced the fireplace in his room was inoperable. The tenant stated that at the start of the tenancy he had asked to have the fireplace repaired and was told that approval would be sought. The tenant stated that the fireplace has not been repaired or inspected. The tenant requested that the fireplace be inspected and declared safe for use, or that the fireplace be properly sealed so that drafts, dirt and dust cannot enter his room from the chimney. The tenant stated that there is currently a piece of plywood in front of the fireplace and that it does not properly seal the opening.

The tenant submitted evidence of a Notice of Rent Increase issued on January 19, 2010 imposing a 3.8% rent increase of \$16.91, effective May 1, 2010.

Analysis

Section 29 of the Act provides:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;**
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:**
 - (i) the purpose for entering, which must be reasonable;**
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;**
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

(Emphasis added)

During the hearing the parties agreed to the following steps when serving the tenant notice of entry by the landlord:

- The landlord's agent will serve the tenant with written notice of entry by placing the notice under the tenant's rental unit door;
- The notice will include the date and time of service and the signature of the landlord's agent and a witness to this service;
- That the tenant will accept notices served in this manner and, if placed under his door at least 24 hours prior to the time of entry, that the notice will be accepted as sufficiently served.

The tenant is also at liberty to mutually agree to entry to his room by the landlord or repair staff; however, I find that any mutual agreement by the tenant must be accompanied by a written consent issued by the tenant addressed to the landlord's

agent. This will avoid any confusion on the part of the parties and potential situations whereby workers could be turned away from the rental unit. I find, as provided by section 62(3) of the Act; that once the tenant provides any written mutual consent for entry by the landlord or repair staff, this consent is irrevocable and must be honoured by the tenant.

I find that the landlord is not required to provide notice when entering the common areas of the rental unit.

The landlord testified that the following repair work is to commence on January 28, 2010:

- Replace first floor bathroom flooring, which may require new sub-floor;
- Removal of the claw-foot bathtub to allow access to the flooring;
- Tile installation in the first floor bathroom;
- Repair of the ceiling in the tenant's room, which will require an estimated three follow-up visits by the drywall installer.

During the hearing the parties agreed to and understood the following:

- On January 28, 2010, at 10:00 a.m. repairs to the main floor bathroom in the common area will commence;
- During the on-going repairs completed to the first floor common area bathroom the tenant will have the use of the upstairs bathroom and the tenant agrees this is an adequate arrangement;
- That at 4:00 p.m. on January 28, 2010, the landlord's agent will complete an inspection of the rental unit counter, fireplace and general condition of the rental unit in order to establish the need for further repair.
- On Thursday January 28, 2010, at 4:00 p.m. repair of the ceiling in the rental unit will commence.

During the hearing the tenant acknowledged receipt of adequate notice of these entry times on February 28, 2010.

During the hearing the landlord's agent confirmed that she will ensure that a furnace repair company is immediately contacted to investigate the lack of heat in the bathroom and common area and, that steps will take place to complete any required repairs within a reasonable period of time.

During the hearing the landlord agreed to meet one of the tenant's two requests related to the fireplace; that it will be inspected and made functional, taking into account the required safety precautions, or, that the fireplace will be fully sealed so that drafts and debris cannot enter the room from the chimney. I find that this inspection and possible repair or sealing of the fireplace must occur within a reasonable period of time but no later than February 26, 2010.

The tenant has not made application to dispute an additional rent increase; however the Notice of Rent Increase issued on January 19, 2010, has imposed an increase of 3.8%, not the allowed rate of 3.2% set by the Residential Tenancy Branch for 2010.

The portion of the tenant's application related to smoke alarms was not discussed during this hearing. The landlord testified that many of the items included the tenant's claim have now been resolved, so the matter of smoke alarms may have been addressed; however, if the rental unit is without smoke alarms I find that the landlord must immediately ensure that an appropriate number of functioning alarms are installed. I have made this finding based upon section 32(1)(a) of the Act which requires a landlord to maintain a rental unit in a manner that complies with safety regulations.

Conclusion

This hearing will reconvene on **Friday March 12, 2010 at 10:30 a.m.** Copies of the Notice of Reconvened Hearing which includes the telephone conference call password and dialling information are enclosed for each party with this interim decision.

As determined during the hearing, no further evidence will be accepted or considered at the reconvened hearing.

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: January 28, 2010.

Dispute Resolution Officer