



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, RPP, LRE, RR

Introduction

This hearing dealt with an application by the tenant for a number of orders, including a monetary order. At the hearing the tenant confirmed that she had vacated the rental unit and was therefore withdrawing her claims for all but the monetary order. The landlord and his witnesses also appeared at the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The rental unit is one half of a duplex which is approximately 40 years old. The tenancy began in or about November 2008. The tenant testified that at the time the tenancy agreement was signed, she and the landlord discussed a number of repairs that were required and that the landlord agreed to perform those repairs as a term of the tenancy agreement. A copy of the condition inspection report which was signed by both parties at the outset of the tenancy was submitted into evidence. On that report there is a box in which the parties can list repairs which are to be completed at the start of the tenancy. In the box, the parties wrote the following: “garbage can with wheels; closet doors fix; fridge clean or replace; paint closet door; stove replace; [and] give receipt [sic] for damage deposit \$350.00.” The tenant testified that the list of repairs is incomplete and was not noticed at the time the agreement was signed, but the landlord’s representations to her should still be binding upon him.

Specifically, the tenant testified that the landlord promised to install railings on the front and back porch areas and replace kitchen countertops. The tenant testified that she has fallen off the porches a number of times and that she would not have entered into the tenancy had she known that safety railings would not be installed. The tenant further testified that the countertops have deep gouges which expose the wood beneath the finish and that she was unable to use the countertops without covering them with a cutting board. The landlord testified that he recalled the tenant having brought the issues of the railings and countertops to his attention early in the tenancy and acknowledged that he said that he intended to install railings and replace the countertops. However, the landlord testified that the tenant became increasingly demanding and when he learned through other parties that she had a history of making unreasonable demands of landlords, he was no longer inclined to accede to her requests.

The tenant testified that during the tenancy she discovered that the windows were exceedingly drafty and needed to be weatherstripped. The tenant claimed to have contacted the landlord about the problem, but nothing was done about it. The landlord testified that the single pane windows with aluminum frames windows are original to the home and at the beginning of the tenancy the landlord warned the tenant that the windows were somewhat drafty. The landlord further testified that the tenant did not ask him to weatherstrip the windows during the tenancy.

The tenant testified that she has allergic reactions to mosquito bites and that when spring came, she was concerned that mosquitoes could get in because the screens fit loosely in the windows and left gaps. The tenant testified that previous tenants had placed stones or wood around the frames in order to hold the screens in place. The tenant testified that she asked the landlord to replace the screens and that he promised to do so, measuring the screens at least 3 times during the tenancy. The screens were never replaced. The landlord acknowledged that the screens fit loosely in the windows and testified that he did not promise to replace the screens, but that he thought he might have extra screens at home that would fit the windows. The landlord did not find

screens that would work and testified that he offered to put white duct tape around the screens to make the screens more secure, but the tenant declined as she thought this would look tacky. The tenant acknowledged telling the landlord that duct tape would look tacky, but denied having declined his offer to secure the screens with duct tape.

The tenant testified that throughout the tenancy the washing machine would intermittently stain her clothing and linens with what she described as “black goo.” The landlord testified that when the tenant advised him of this problem, he hired a repairman who inspected the washing machine and found that nothing was wrong with it. The tenant acknowledged that the repairman found nothing wrong, but argued that there was clearly a problem because she continued to experience staining on her clothing.

The tenant testified that on one occasion during the tenancy the landlord mowed the perimeter of the lawn and damaged the edging, breaking a solar light, a planter, a pot and a garden tile. The landlord acknowledged that he broke a pot on that occasion, but testified that the light was already broken when he arrived and denied any knowledge of further damage.

The tenant provided photographs of the countertops, screens and her clothing and linens which she alleged was damaged by the washing machine. The tenant seeks compensation for damages to her clothing and garden items and compensation for loss of quiet enjoyment as a result of the landlord's alleged failure to perform repairs.

Analysis

In order to prove her claim for the replacement of the countertop and installation of safety rails, the tenant must prove that the landlord failed to do that which he was contractually obligated to do. Although the tenant claimed that the provision of railings and the replacement of the kitchen countertop were promised as a term of her tenancy agreement, I find that the tenant has failed to prove that this is the case. The condition inspection report proves to me that there were certain items which the landlord agreed to repair or replace, but these are not the repairs in contention. I find that the tenant has

not proven on the balance of probabilities that the replacement of the countertop or installation of railings were a term of the tenancy agreement and accordingly I find that this part of the tenant's claim must be dismissed.

Section 32(1) of the Act obliges landlords to maintain residential property in a state of repair that, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. In this case, the rental unit is a 40 year old home. It has its original windows and the tenant cannot expect that such windows will provide insulation to the same degree that newer, more efficient designs would offer. The photographs provided by the tenant have not persuaded me that the windows in the unit required weatherstripping and in any event, I am not persuaded that the tenant asked the landlord to install weatherstripping prior to making her claim. As for the screens, neither party claimed that it was a term of the tenancy agreement that the landlord replace the screens and I am not satisfied that the screens were as ineffective as is claimed by the tenant. I prefer the evidence of the landlord that his offer to duct tape the screens was refused by the tenant. I find that the screens were not ineffective to a degree which would attract compensation and accordingly I dismiss the claims for compensation related to the windows and screens.

There is no dispute that the landlord arranged for a repairman to inspect the washing machine when the tenant made her complaint. There is also no dispute that the repairman found that the washing machine was in good working condition and required no repair. I accept that the washing machine did not require repair and accordingly I find that the tenant has failed to prove that a malfunction of the washing machine caused the soiling of her clothing and linens. The claim is dismissed.

The tenant claimed that the landlord broke a number of her garden items and the landlord admitted to having broken a small piece off of one pot. The tenant provided no photographs or invoices showing the value of the items she claimed were damaged or even that other items besides one pot were in fact damaged. I find that the tenant has failed to prove damage to most of the items and I find that she has not proven the

quantum of her claim with respect to the pot that was damaged. The claim is therefore dismissed.

Conclusion

The tenant's claim is dismissed in its entirety.

Dated: January 12, 2010
