



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OLC, ERP, RP, PSF, RR

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order that the landlord comply with the Act, an order that the landlord perform repairs and provide services and an order permitting the tenant to reduce his rent. Both parties participated in the hearing.

At the hearing the tenant acknowledged that the landlord had performed the repairs to his bathroom ceiling. As the requested repairs are no longer required, I consider that claim to have been withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Should the landlord be ordered to comply with the Act?

Is the tenant entitled to a rent reduction?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2007. Rent at that time was set at \$825.00 per month. In 2009 the rent was raised to \$850.00 per month and in 2010 the rent was raised to \$870.00 per month.

The parties agreed that at the time the tenant took possession of the unit the landlord promised him that the countertops, sinks and faucets in the kitchen and bathroom would be replaced. The work was performed over the first two weeks of the tenancy. The

tenant testified that the contractors who replaced the countertops performed their work very quickly, but that the part of the work that the building manager, G.Z., was supposed to perform was not completed until 2 weeks after the tenancy began. In particular, the tenant maintained that he was unable to use the kitchen sink for a period of time. The tenant further testified that despite several attempts by G.Z. to install a towel bar, it was not successfully installed until the tenant did it himself. The tenant further testified that there was a one year delay in having his balcony repainted, that because he is disabled he has difficulty negotiating the stairs in the building which he believes are unusually steep, that common areas are not regularly vacuumed, that a sink in the common laundry room was not installed for 19 days and that it partially obstructed the entrance to the laundry room when it sat outside that room before installation, that there are abandoned bicycles in the parking area, that there are dead branches in the trees and that the building manager does not adequately clean the area outside the building. The tenant further testified that his mailbox had been broken into and that the landlord took an excessive length of time to repair the mailbox. The landlord's agents J.N. and G.Z. testified that the countertops were replaced very quickly and that the sinks were replaced over a period of 2 days, with the kitchen sink unable to be used for one day and the bathroom sink unable to be used the following day. The landlord denied having received complaints from the tenant about the maintenance of the common areas, bicycles in the parking area, the delay in installing the laundry room sink or the dead branches in the trees. The landlord testified that the building has a level access and an elevator, so the tenant is able to avoid use of the stairs if he wishes to do so. The landlord testified that there were problems with a number of mailboxes and that the tenant still had full access to the mailbox before it was fully repaired, but that it took a long time to repair the mailboxes because the landlord had to secure another supplier who could fit the existing mailboxes with locks as the landlord wished to retain the existing mailboxes and only replace the locks which were causing problems. The tenant testified that although he made some complaints at the beginning of the tenancy, he stopped because G.Z. was not receptive to complaints. The tenant seeks to have his rent reduced to \$825.00 per month, the amount he was paying at the beginning of the tenancy, as compensation for services not received.

The parties agreed that in the tenant's bathroom there is an access panel in the ceiling above the bathtub. The tenant testified that from the outset of the tenancy there was a leak from the rental unit immediately above his and that he reported it to G.Z. The tenant testified that the leak continued for three years until it was finally repaired on January 12, 2010, after the tenant had made his application for dispute resolution. The tenant brought to the hearing the access panel, which was warped, and a piece of the paper from the insulation which he claimed was mouldy. The tenant claimed that exposure to the moulds growing as a result of the leak were a health hazard. The landlord testified that the tenant first made them aware of a leak in 2008 at which time they investigated and discovered the source of the leak in the upper unit. The landlord repaired the leak shortly after it was reported but did not replace the access panel until January 2010. The landlord testified that they spoke with the tenant shortly after the leak was repaired in 2008 to ask if there were any further problems at which time he indicated that everything was fine. The tenant seeks \$1,475.00 in compensation for the delay in repairing the leak and the additional time he spent cleaning the bathroom.

The tenant testified that in June 2007 his car, which was parked in the parking area of the building, was broken into and the lock on the driver's side door was broken. The tenant testified that the landlord's failure to patrol the garage and keep the area under surveillance is to blame for the break-in. The tenant argued that because the landlord failed to remove the abandoned bicycles from the parking area, this showed prospective thieves that the area was not closely monitored. The tenant further testified that after the break-in G.Z. began parking his own vehicle in a secure garage. The tenant argued that he wishes to have the same level of security for his vehicle as G.Z. now enjoys. The landlord testified that the parking area is gated and enclosed by a fence, but there is no way to prevent the occasional break-in. The tenant seeks to recover \$150.00, which is one half of his \$300.00 comprehensive automobile insurance.

The tenant testified that despite his specific request that the landlord not permit anyone to enter the building without first telephoning him to ensure that they are a welcome guest, G.Z. permitted a process server to enter the building. The process server swore

out an affidavit of service showing that she had attempted to serve the tenant but that he did not open the door, despite a light having been on the unit. The tenant testified that as a result of G.Z. having admitted the process server without the tenant's express permission, a judge in a family law proceeding made a \$23,000.00 award against the tenant. The tenant seeks to recover one half of this award from the landlord. I did not hear submissions on this issue for reasons which are explained in my analysis.

Analysis

As the applicant in this proceeding, the tenant bears the burden of proving his claim on the balance of probabilities. With respect to his first claim, to reduce his rent to the amount he was originally paying, I find that the tenant has not been prevented from accessing the building because of the stairs as there is another access which does not involve stairs. I find that the tenant has failed to prove that he made complaints to the landlord about the cleaning issues, the laundry sink, the abandoned bicycles and the dead branches. The landlord cannot be expected to know that these are issues for the tenant if he does not advise the landlord that there is a problem. I find that any delay in repainting the balcony had such a minimal impact on the tenant that it cannot attract compensation. I find that the landlord made reasonable attempts to install the towel bar and the fact that the tenant took matters into his own hands to effect the repair does not mean the tenant is entitled to compensation. I accept that the lock on the mailbox was not replaced for almost a year after the mailbox was broken into, but because the tenant did not present evidence that the mailbox was insecure and because his access to the mailbox was uninterrupted, I find that the issue had a minimal impact on the tenant and cannot attract compensation. As for the loss of use of the kitchen and bathroom sinks, I find that the tenant lost use of each sink for a period of one day. The fact that the tenant had to use the old sinks for two weeks of his tenancy is not compensable. I find that the tenant is entitled to an award of \$20.00 for the loss of each sink for that one day period and I award the tenant a total of \$40.00.

Although the tenant claimed that the leak in the bathroom started in 2007, I find that the tenant has not proven on the balance of probabilities that the leak began at that time.

As the landlord has agreed that the leak was reported in 2008, I find that the leak was reported by the tenant in 2008 and that it was repaired within a reasonable period of time. I find that the fact that the access panel was not installed until 2010 does not attract compensation as the problem was purely cosmetic and very minimally problematic. I find that the landlord acted quickly and reasonably to address the bathroom ceiling leak and I dismiss the tenant's claim for compensation.

I find that the landlord cannot be held responsible for the tenant's vehicle having been broken into. The landlord did not promise to provide 24 hour patrols and surveillance of the parking area and as there is no evidence that the security which was in place, namely the fence and gate, was intact, I find that the landlord fulfilled its obligation with respect to securing the parking area. The landlord is not the tenant's insurer and therefore I dismiss the tenant's claim.

As for the tenant's claim for half of the cost of the family court judgment which was made against him, I did not permit either party to address this issue as I find that the landlord cannot in any way be held liable for that judgment. By admitting a process server to the common area of the building the landlord has in no way violated his obligations under the *Residential Tenancy Act* or the tenancy agreement. If the tenant disagreed with the decision of the court, he is at liberty to appeal that decision. I find that inclusion of this claim to be frivolous under the meaning of section 62(4) of the Act and I dismiss the claim.

Conclusion

The tenant is awarded a total of \$40.00. This sum may be deducted from future rent owed to the landlord.

Dated: February 16, 2010
