



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC, ERP, RP, RR, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlords comply with the Act by making emergency repairs and/or regular repairs to the rental unit. The Tenant also applied for a monetary order for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and for an order allowing her to reduce the rent for repairs not performed. The Tenant amended her application on January 26, 2010 to cancel a One Month Notice to End Tenancy for Cause dated January 25, 2010.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are emergency or general repairs required?
3. Is the Tenant entitled to compensation for damages and if so, how much?
4. Is the Tenant entitled to a rent reduction for repairs that have not been made?

Background and Evidence

This tenancy started on June 1, 2008. Rent is \$1,350.00 per month payable in advance on the 1st day of each month.

On January 25, 2010, the Landlord served the Tenant (and her co-Tenant) with a One Month Notice to End Tenancy for Cause which alleged the following grounds:

- The Tenant has not done required repairs of damage to the unit;
- The Tenant knowingly gave false information to a prospective tenant or purchaser of the rental unit or rental property.

In support of the first ground on the Notice, the Landlord claimed that she discovered in November 2009 that the Tenants had damaged the window of the oven door. The Landlord said the Tenants had previously advised her that the oven didn't work but did not specify the nature of the damage. The Landlord also claimed that an agent of the oven supplier told her that the window could only have been damaged by negligence and therefore he would not honour the warranty. The Landlord admitted that the person who made this opinion did not look at the oven but relied on her description of the damage. One of the Landlords said she asked the Tenant to have the oven repaired

but she refused to do so and as a result, the Landlords had the oven repaired by another supplier on January 20, 2010.

The Tenant claimed in her written submissions that she first noticed a crack in the oven door window in October 2008 and brought it to the attention of the previous property manager, Andrew, who advised her not to use it until the window was repaired. The Tenant also claimed that Andrew made arrangements with the supplier in November 2008 to repair the oven, but the supplier later advised her that they would not repair the oven until the Landlords paid a delinquent account. The Tenant said she sent an e-mail to the Landlords in April 2009 asking if she could pay for the repair and deduct the amount from her rent but the Landlords did not respond.

In support of the second ground of the Notice, one of the Landlords claimed that sometime in December 2009 or January 2010, a prospective tenant named "Michelle" told her that the Tenants said that the Landlords would not make repairs.

In her submissions, the Tenant argued that from the beginning of the tenancy she has had ongoing problems with the Landlords failing to make repairs. In particular, she claimed that the patio and entrance were supposed to be completed by June 1, 2008 but were not totally completed until October 2008. The Tenant also claimed that she had problems with a garage key fob that the Landlords failed to address for a number of months. The Tenant further argued that the Landlords failed to repair a bathroom door for almost 9 months, took 15 months to repair the oven door and have still not repaired a water leak in the floor by the patio doors. Finally, the Tenant argued that the Landlords only served her (and her co-tenant) with the One Month Notice after she served them with her Application for Dispute Resolution to have repairs done.

The Tenants claim that on or about December 20, 2009, they noticed a water leak in the flooring near the patio doors. The Tenants said they brought this to the Landlords' attention on December 21, 2009 however to date the leak has not been repaired. Consequently, the Tenants sought a rent rebate of \$500.00 per month until the repairs have been completed.

The Landlords said the patio outside must first be repaired to prevent water from leaking inside before the floor inside the rental unit can be repaired. The Landlords admitted that they had problems trying to get the original contractor to come back to repair his work but claim that they hired a new contractor on January 22, 2010. The Landlords said this contractor was supposed to start work on the patio on February 6, 2010 but could not gain access to the rental unit. The Landlords also claimed that they have to coordinate a time with the Tenants because they do not want contractors entering the rental unit unless they are home. Consequently, the Landlords argued that they have taken reasonable steps to address the water leak in the rental unit but that they are at

the mercy of contractors who control their own schedules and have to wait until there is no rain.

Analysis

I find that there is insufficient evidence to support the grounds alleged on the One Month Notice dated January 25, 2010. In particular, I find that the hearsay evidence of the oven supplier regarding the Tenant's negligence is unreliable and I give it little weight. I accept the Tenant's evidence was that this matter was brought to the attention of the previous property manager in October 2008 and that the Landlord failed to have it repaired because of a delinquent account with the supplier. Consequently, I cannot conclude that the damage occurred due to some act or neglect of the Tenant and even if she had, I would find that the damage was not significant enough to warrant eviction.

Similarly, I find that the hearsay evidence of a prospective tenant named "Michelle" is unreliable and I give it little weight. I note that this ground of the Notice also requires that the statement made to a prospective tenant must be "false." Even if the Tenant did make a statement that the Landlord failed to make repairs, I cannot conclude that that was a false statement. The Tenant provided copies of numerous e-mails to the Landlords throughout the tenancy expressing her frustration over having to make repeated requests for repairs and receiving no response to them. Consequently, I find that there is insufficient evidence to support this ground and as a result, the One Month Notice is cancelled.

I find that the water leak in the floor is not an emergency repair as defined under s. 33 of the Act. The Tenant's agent argued that the increased moisture in the rental unit caused mould to grow between the floor boards. He further argued that the Tenant and her co-Tenant (as well as their cats) have suffered respiratory problems because of the mould. However, there was no medical or other evidence to corroborate the argument that the water leak (which is confined to the patio door area) is a health hazard. Consequently, I conclude that this is a regular repair that falls under s. 32 of the Act for which the Landlords are responsible.

While I appreciate that the Landlords may have contractor schedules and weather conditions to deal with, I do not find that these matters should continue to prolong the repairs which have not even been started in the 2 months after the leak was reported by the Tenants. Based on the well-documented e-mail correspondence provided by the Tenant, I find that she and her co-Tenant have been more than co-operative with the Landlords in trying to facilitate the repairs; for example by waiting for contractors to arrive on at least 4 occasions when they later cancelled on short or no notice and providing contact numbers so that they can attend the rental unit on short notice. Based also on the well-documented e-mail correspondence of the Tenant, I find that the



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Landlords have taken an unreasonably long time in the past to make repairs and as a result, I grant the Tenant's application for a rent reduction. In particular, I Order that if repairs to the outdoor patio and the interior floor of the rental unit are not completed by March 31, 2010 by the Landlords, then the Tenant will be entitled to deduct \$500.00 from her rent payment for April 2010 and for each month or part month thereafter that the repairs remain unfinished.

I find that the amount of \$500.00 per month is reasonable given that the size of the floor area affected by the leak is approximately 20% of the floor area of the rental unit and the use of it has now been lost by the Tenant and her co-tenant. In particular, they claim that they used this area for their cats' play stand and for a desk but now have the area covered with towels to absorb the water.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's claim for compensation for damages due to a loss of use of the rental unit for the months of January and February 2010 (and possibly March 2010) from a water leak, for loss of use of an oven and for loss of use of the patio for the months of June and July 2008 are largely unrelated to the issues of the One Month Notice to End Tenancy and the "emergency repair" and they are dismissed with leave to reapply.

As the Tenant has been successful in this matter, I find that she is entitled to recover the \$50.00 filing fee for this proceeding and I order pursuant to s. 72 of the Act that she may deduct that amount from her next rent payment due on March 1, 2010.

Conclusion

The Tenant's application is allowed. The Notice to end Tenancy for Cause dated January 25, 2010 is cancelled and the tenancy will continue. Commencing April 1, 2010 and continuing for each month or part month that repairs to the patio and interior floor remain unfinished, the Tenant will be entitled to reduce her rent by \$500.00 per month. The Tenant's application for emergency repairs and general repairs is dismissed with leave to reapply. The Tenant's application for compensation is also dismissed with 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: February 25, 2010.

Dispute Resolution Officer