

DECISION

Dispute Codes DRI OLC ERP RP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute an additional rent increase, to obtain an Order to have the Landlord comply with the Act, make emergency repairs for health and safety reasons, and to have the Landlord make repairs to the unit, site, or property, and recover the cost of the filing fee from the Landlord for this application.

The hearing documents were served personally by the Tenant to the Landlord on approximately February 14, 2010. The Landlord acknowledged receipt of the hearing package.

The Landlord and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord acknowledged receipt of evidence submitted by the Tenant and confirmed that the Landlord did not submit evidence.

Issues(s) to be Decided

Is the Tenant entitled to dispute a rent increase issued not in accordance with the Regulations under section 43 of the *Residential Tenancy Act*?

Is the Tenant entitled to Orders a) to have the Landlord comply with the Act, b) have the Landlord make emergency repairs for health and safety reasons, and c) to have the Landlord make repairs to the unit, site, or property under sections 32, 62, and 65 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on December 1, 2004 with the current monthly rent payable on the first of each month in the amount of \$635.00, after a rent increase effective January 1, 2010. The Tenant paid a security deposit of \$272.50 in November 2004.

The Landlord testified and agreed that he had made an error in calculating the Tenant's rent increase from \$610.00 to \$635.00 effective January 1, 2010, as it was higher than the 3.2% legislated amount, and stated that he arranged with the Tenant to pay \$630.00 per month effective February 1, 2010.

The parties confirmed the Tenant paid \$635.00 for January 2010 and \$630.00 per month for February 2010 and March 2010 rent. After discussing the legislated allowable increase would take the Tenant's rent to \$629.52 per month, and the legislation does not allow rounding up the amount, the Landlord agreed to pay the Tenant \$15.00 cash as reimbursement of her overpayments and agreed to lower the Tenant's rent to \$625.00 effective April 1, 2010.

The Tenant is seeking to have repairs completed and argued that she has had many conversations with the Landlord, requesting the repairs, and provided copies of letters she has issued to the Landlord in 2005, 2007, and 2008 requesting the repairs.

The Landlord argued that his tenants are instructed to put their maintenance requests into a request box and that his maintenance person removes these requests and completes the repairs. The Landlord testified that he does not check to see which repairs are being requested or completed and he pays the maintenance person based on his invoices but that the Landlord never does a follow up or check to ensure the work is completed. The Landlord claimed that he knew nothing of the Tenant's concerns until he received the evidence and notice of dispute resolution hearing.

The Tenant argued that she has made numerous requests directly to the Landlord and has taken time off of work to stay home on Fridays in anticipation that the maintenance person would be completing repairs however he never shows up.

The Tenant referred to her photographic evidence in support of the following items she is requesting to have repaired:

- Kitchen linoleum floor is worn through in an open area where she walks. The Landlord argued that this was the condition of the floor prior to the onset of the tenancy. The Tenant confirmed that the floor was in this condition at the onset of the tenancy.
- Brown closet doors on two closets in the hallway keep falling off the track making it impossible to use the doors. The Landlord argued that the doors are as old as the building which was built in 1972 and that he can no longer get parts for these old doors so they built a header to help keep them in place however it does not work.

- There are metal doors in two of the bedrooms which are stained, dented, and are permanently off the track making it difficult to use them. The Landlord confirmed that they removed the pins from the bottoms of the door which causes them to swing and more difficult to maneuver however these metal doors are approximately 48 years old (1962) and there are no parts to be found to repair these doors.
- The Tenant noticed about two weeks ago water leaking from her ceiling in an area of her hallway where a leak had occurred back in December 2006. The Landlord argued that he knew nothing of this new water leak and stated that he would look into it.
- The Tenant states that her intercom has not worked properly for sometime as it will buzz but she cannot hear the people at the other end and they cannot hear her. The Landlord stated that the buzzer and small speaker are about eight feet away from the door and people have been known to hit the buzzer and walk to the door which is too far away from the speaker. The Landlord stated that he would work with the Tenant next week to ensure she knows how to properly operate the intercom system and to ensure that it is not requiring repair.
- The Tenant has requested that the handrail, which has been missing for months, be replaced in the stairwell located at the south end of the building between the 1st and 2nd floors. The Landlord argued that there are a couple of tenants who have been evicted at the end of March 2010 and the Landlord suspects that these tenants have been causing damage to the building and are responsible for ripping the hand rail off of the wall. The Landlord stated that he did not want to replace the handrail until these tenants had vacated the rental unit for fear that they would rip it off as soon as it was put back up.
- The Tenant advised that she can no longer gain entry into the door off of the parking lot as her key no longer works on this door. The Landlord confirmed that he changed the lock on this door because of vandalism and damage caused to this door by tenants and their guests who jam rocks in between the door and the frame damaging the hinges when they try to leave the door propped open and the building left unsecure. The Landlord argued that he has a press bar on back order and that once it is received and installed the tenants will be allowed to exit the building by the door however they will have to enter the building by one of the other three access doors. The Landlord confirmed that he has not issued a notice to the tenants informing them of this change.
- The Tenant stated that she has been waiting approximately two months to have her kitchen taps repaired as they are constantly dripping hot water. The

Landlord did not provide testimony in response to the Tenant's request to have the taps repaired.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence and testimony supports that the Landlord implemented a rent increase that does not comply with section 43 of the Act and the allowable 3.2% increase. During the hearing the Landlord testified that he would lower the Tenant's rent to **\$625.00 effective April 1, 2010**, in compliance with the Act, and the Landlord will reimburse the Tenant \$15.00 cash, for the accommodate the Tenant for the overpayments in January 2010, February 2010, and March 2010, no later than **March 19, 2010**.

Section 32 of the Act provides that a Landlord must 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 the tenant.

With respect to the Tenant's requests for repairs under the Act I make the following findings:

- A) The damaged kitchen linoleum floor while unsightly was present at the onset of the tenancy and does not meet the requirements under the Act to be ordered to be replaced. The existing damage does not prevent the floor from being used and the Tenant could cover up the damaged section with a carpet if she wished not to see it.
- B) Brown closet doors on two closets in the hallway have surpassed their useful life and are not working in the manner in which they are intended. The evidence supports that these doors are not operational and could cause someone harm if they fell off the tracks completely. Based on the aforementioned and in the presence of the Landlord's testimony that these doors are so old that they cannot be repaired I find that the Landlord is required to remove these doors and replace them with doors which are fully operational and can be opened and closed as closet doors are intended to do. The Landlord is hereby ordered to replace both sets of brown closed doors, located in the hallway / living space, with doors that operate properly, no later than **April 16, 2010**.
- C) Upon careful review of the testimony and evidence I find that the metal closet doors located in the two bedrooms have also surpassed their useful life and are

not operating in a safe manner, as closet doors are designed too. Based on the aforementioned I hereby order the Landlord to replace the closet doors located in the two bedrooms with doors, with doors that operate properly, no later than **April 16, 2010.**

- D) The evidence supports that the Tenant has noticed water dripping from her ceiling in an area where there was a previous leak from the rental unit above. Based on the above I hereby order the Landlord to investigate and complete all necessary repairs to stop the water leak no later than **March 26, 2010.** If the repair requires the ceiling to be cut open, I hereby order the Landlord to repair, patch, and paint the ceiling, after completion of the water drip repair, no later than **April 9, 2010.**
- E) The evidence supports that there is an issue surrounding the intercom system. The Landlord stated that he would work with the Tenant to ensure she knows how to properly operate the intercom system and to ensure that it is not requiring repair. I hereby order the Landlord to complete the investigation and training with the Tenant no later than **March 26, 2010** however if the intercom system requires repair the Landlord is hereby ordered to have the repairs completed no later than **April 23, 2010.**
- F) The missing handrail in the stairwell located at the south end of the building between the 1st and 2nd floors constitutes a health and safety issue; however there is evidence to support that if the handrail is replaced before March 31, 2010 it may very well be removed by vandals as soon as it is put up. Based on the aforementioned I hereby order the Landlord to have the above mentioned handrail replaced no later than **April 1, 2010.**
- G) The evidence supports that the Landlord is changing access from the parking lot into the rental building and will be installing a push bar as a security measure. Based on the aforementioned I hereby order the Landlord to provide all tenants with written notification of the change of access to the door off of the parking lot no later than **March 19, 2010.**
- H) The evidence supports that the Tenant's kitchen taps are constantly dripping hot water. Based on the aforementioned I hereby order the Landlord to have the Tenant's kitchen taps repaired to prevent water dripping once the taps have been turned off, no later than **April 1, 2010.**

I find that the Tenant has proven, as of today's date that the Landlord has been informed of the required repairs and if the Landlord does not comply with the above issued orders, the Tenant would be at liberty to apply for compensation under the Act.

As the Tenant has been successful with her application I hereby award the Tenant recovery of the \$50.00 filing fee.

Conclusion

The Landlord is hereby ordered to comply with the Orders as listed above, in accordance with section 62(3) of the *Residential Tenancy Act*.

The Tenant is at liberty to deduct \$50.00 from her April 1, 2010 rent to recover the filing fee as awarded above.

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: March 12, 2010.

Dispute Resolution Officer