

DECISION

Dispute Codes MNDC OLC ERP RP LRE RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to obtain an Order to have the Landlord comply with the Act, regulation, or tenancy agreement, make emergency repairs for health or safety reasons, make repairs to the unit, site or property, suspend or set conditions on the landlord's right to enter the rental unit, and allow the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally by the Tenant on March 19, 2009. The Landlord confirmed receipt of the hearing package.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord (a) comply with the Act, regulation, or tenancy agreement, (b) make emergency repairs for health or safety reasons, (c) make repairs to the unit, site or property, and (d) suspend or set conditions on the landlord's right to enter the rental unit, under sections 62, 32, 33, and 70 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to allow the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided, under section 65 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant noted that he did not receive the Landlord's evidence until April 29, 2010, which was only four days prior to the hearing date. The Tenant confirmed that his evidence was provided to the Landlord on April 23, 2010.

The undisputed testimony was the month to month written tenancy agreement began in November 2008 for the rental of a room in a single room occupancy (SRO) rental unit. The monthly rent is payable on the first of each month in the amount of \$425.00 and the Tenant paid a security deposit of \$212.50 on or before November 1, 2008.

The Tenant referred to his documentary evidence in support of his testimony which included, among other things, a written submission from the Tenant's Advocate, a hand written list of the Tenant's complaints, a letter from the Advocates office to the Landlord dated March 19, 2010, complaining of unauthorized access to the Tenant's room, photos of the rental unit window taken on approximately April 18, 2010, and a room check notice issued by the Landlord on March 19, 2010.

The Tenant testified that he is seeking \$2,500.00 from the Landlord which represents approximately sixteen and one half months at \$150.00 per month rent abatement for (a) having to live in a rental unit that was not properly cleaned at the onset of the tenancy; and (b) because cleaning supplies were not provided by the Landlord to the Tenant as verbally agreed upon; and (c) the rental unit was not painted at the onset of the tenancy nor was there paint provided to the Tenant so he could do the painting as verbally agreed upon; and (d) for having to live in a rental unit with a window that has a large gap between the upper and lower window panes which allows a draft to come into the room; and (e) for having to live with lack of proper heating during break downs and problems with the boiler; and (f) having to sleep on a bed that had a broken box spring and a mattress that has springs poking the Tenant while he sleeps; and (g) having to live in a building that has problems with bed bugs and other insects or bugs requiring pest control.

The Tenant confirmed that he entered into an agreement to rent this room after attending a meeting at another building operated by the Landlord and later viewing the SRO room before signing the tenancy agreement.

The Tenant argued that he has brought all of the above listed items to the attention of the Landlord at different times throughout the tenancy and nothing seems to get done. The Tenant could not recall which dates he spoke to the Landlord's staff about these items and could not recall if he ever put his requests in writing to the Landlord.

The Tenant testified that he would ask the front counter staff to turn on the heat when he was cold and they said they would put the heat on however the Tenant did not know

if they actually turned the heat on. The Tenant confirmed that the Landlord offered him the opportunity to change rooms and he refused to move because he does not have the money to reconnect his utilities such as internet and he does not want to reside on the first floor.

The Tenant advised that he is very concerned with his privacy, that the Landlord demanded that he sign a consent form for the Landlord to access his information with Income Assistance, and the Landlord has been accessing his rental unit during his absences after he requested that he be present every time the Landlord or a worker enters his room. The Tenant is seeking an Order to have the Landlord comply with sections 32 and 29 of the Act.

The Tenant confirmed that when he first applied for dispute resolution there were problems with the boiler and no heat. The Tenant confirmed the boiler problems have since been rectified. The Tenant testified that his box spring has been replaced and he is still requesting that the Landlord provide him with a clean, undamaged mattress. The Tenant stated he was told the windows in the building will be replaced sometime this year and he is seeking to have the gap in his window sealed off in the interim to prevent the draft in his room and not just duct taped that will come off with the moisture. The Tenant is asking for reduced rent because of the window draft, mattress issue, and lack of painting in the rental unit. The Tenant stated that it was an insult to him having the Landlord entering his room when he is not present and he requests that this stop immediately.

When asked why he did not bring these issues forward prior to this application the Tenant replied "I understand it takes awhile to get things done".

The Landlord testified that the Tenant's application came as a "blind sided swipe" to her because since her employment began in February 2009 she has had a good relationship with the Tenant. The Landlord argued the Tenant would previously engage in good conversations, has seemed to be quite content, and the Tenant would work with the staff if he had issues relating to maintenance or entry into his room. The Landlord stated that she feels this is the Tenants attempt at a money grab because the Tenant was overheard to be talking about a another tenant who went to dispute resolution. The Tenant allegedly stated that this other tenant should have gone after more money.

The Landlord testified that the Tenant has not previously voiced these concerns and she referred to her documentary evidence in support of this testimony, which included among other things, the Landlord's written statement in response to the Tenant's statement, letters from tenant support workers, a copy of the tenant's house rules, photos of the rental unit, copies of pest control and maintenance reports, a copy of the

report and letter from the city building inspector from September 2009, and a copy of the invoice to support that the boiler was repaired in March 2010.

The Landlord advised that the rental building is 100 years old, is currently undergoing exterior renovations, and permits have been issued by the city to allow the replacement of the windows which are planned to be replaced sometime this year. The Landlord argued that they have completed numerous monthly inspections plus had city building inspectors in the Tenant's room and the Tenant has never advised the staff or inspectors of a problem with his window. The Landlord stated that the first time she ever heard of a problem with the Tenant's window was on March 17, 2010, when she was served with the notice of dispute resolution.

The Tenant confirmed he was in his room when the building inspector attended his room. The Tenant argued that the inspector did not come all the way into his room and the inspection was conducted at the doorway. The Tenant testified that he did not mention the problem with the window in his room to the building inspector.

The Landlord noted that she was concerned that the Tenant took a video of her, without her prior knowledge, and the Tenant has posted this video on a public website without her permission. The Landlord argued that she had posted notices of the monthly inspections for the March 19, 2010 entry and that the Tenant knew the volunteers would be entering on March 12, 2010 to complete some repairs. The Landlord testified that the notices for monthly inspections have always been posted in the same place each month and are posted on average, one week prior to the inspection date. The notices state the Landlord will be entering the Tenant's room between the hours of 10 am and 4 pm. The Landlord confirmed that the Tenant has recently requested that no one enter his room unless he is present and the Landlord is willing to work with the Tenant in providing the Tenant a more specific time period when the monthly inspections will be conducted. The Landlord stated that they usually inspect the rooms in order however she is willing to inspect the Tenant's room out of order to accommodate a more specific entry time.

The Tenant confirmed that he has two videos of the Landlord and staff entering his room on March 13, 2010 and March 19, 2010, which were previously posted to a public website. The Tenant argued that both videos are no longer available to the public and are currently stored in a private folder on the website.

In response to the Tenant's complaints about bed bugs and other pests the Landlord advised that there has never been any evidence of bed bugs in the Tenants mattress or room. The Landlord argued that there is a major concern with the Tenant allowing his dog to sleep on his mattress after the Tenant removed the plastic covering from the mattress. The Landlord also argued that the Tenant does not clean up after himself on

a regular basis which has caused the Landlord to issue the Tenant a room check incident report as provided in the Tenant's evidence. The Landlord argued that the Tenant has a hobby of carving wood and he leaves the wood shavings on the floor for days before cleaning up. The Landlord feels the mess on the walls and window could be attributed to the sawdust and moisture in the room causing it to stick to the walls and window.

The Tenant confirms that he has a hobby of carving wood and bones and that this provides a calming affect for him. The Tenant confirmed that he cleans up his room and the shavings from his carving on average, twice per month.

The Landlord argued that the Tenant asks for things such as pest control or a new bed and then at the last minute changes his mind or turns down the assistance. There is a program through Provincial Assistance where the Tenant could have a bed purchased for him, which then becomes his property to be removed when moves out of the SRO however the Tenant refuses to utilize this program. There is no evidence of any infestation in the Tenant's room and there is no evidence to support his claims about springs poking through the mattress or any other problem with the mattress. The Landlord could not provide testimony to the age of the current mattress.

The Tenant confirmed that he chose not to go through the Provincial Program to get a new bed, as he did not want to use up this onetime benefit. The Tenant argued that the Landlord is required to provide him with a bed under the terms of his tenancy agreement. The Tenant also confirmed that he found out later that the rash that he had experienced was not caused by bed bugs but rather was an allergic reaction to a new soap he had used.

The Tenant emphasized that he requested the Landlord to return or destroy the release of information document the Tenant signed at the onset of his tenancy.

The Landlord testified that the release of information document the Tenant is referring to was shredded immediately following his request and that this happened approximately six months ago.

Analysis

All of the testimony and documentary evidence was carefully considered.

The *Residential Tenancy Branch Rules of Procedure* provides that upon consideration of the date of the hearing and the opportunity for the respondent to provide evidence in

response to the applicant's evidence, the respondent's evidence may be accepted if received by the applicant and the residential tenancy branch at least two days before the hearing. In this case the respondent Landlord submitted their evidence to the Tenant and the Residential Tenancy Branch on April 29, 2010, which is four days prior to the hearing. Therefore I accept the Landlord's evidence and will consider it in my decision in accordance with Rule 4 of the *Residential Tenancy Branch Rules of Procedure*.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Request for Monetary Order

The Tenant has sought \$2,500.00 for damage or loss relating to items or issues that have been present since the onset of the tenancy 18 months ago. The evidence supports that the Tenant failed to prove that he informed the Landlord of his concerns relating to the condition of his room and his window, during monthly inspections and during a third party municipal building inspection that was conducted in September 2009. Therefore I find the Tenant has failed to prove that he did whatever was reasonable to minimize the damage or loss, and therefore has failed to prove the test for damage or loss, as listed above. As per the aforementioned, I dismiss the Tenant's request for monetary compensation.

Request for Repairs and Emergency Repairs

The Tenant and his Advocate have confirmed the Landlord completed the emergency repairs to the boiler heat system and that they were not proceeding with their request for an Order to have the Landlord complete emergency repairs.

I note that while the Tenant has provided testimony relating to the condition of his mattress, he has confirmed that he made a personal choice to remove the plastic covering and to allow his dog to sleep on the mattress. In the presence of the Landlord's opposing testimony relating to the condition of the mattress I find the Tenant has failed to prove the mattress needs to be replaced.

The evidence supports there is a gap between the window panes in the Tenant's room and that the temporary fix of duct tape, provided by the Landlord, has loosened off allowing the draft to come into the room once again. Based on the aforementioned I find that further investigation and repair is required by the Landlord, as an interim measure to prevent the draft as much as possible, until such time as the Landlord replaces the window as currently planned.

In response to the Tenant's request to have his room painted, in the presence of the Landlord's evidence of previous painting and repairs done to the unit, I find the Tenant has failed to prove that the current condition of the walls are in a state that requires painting.

Request Landlord Comply with the Act and Set Conditions on Landlord's Right to Enter

In the presence of opposing testimony between the Tenant and Landlord, and in the absence of documentary evidence, such as a written request issued by the Tenant, I find the Tenant has failed to prove that he requested, prior to his application for dispute resolution, that the Landlord, their staff, and their volunteers not to enter his rental unit in the Tenant's absence. The Landlord has provided affirmed testimony here today that she will inform all of the staff and volunteers of the requirement to have the Tenant present before entering his room, and that she will advise the Tenant, in writing and in advance of the entry date, of the date and time period of not greater than a one hour span, of when they will be entering his room, in accordance with section 29 of the Act. The Tenant is required to work with the Landlord and their staff to accommodate the timing of the planned entry.

In response to the Tenant's request to have the Landlord comply with section 32 of the Act, I note there is a requirement for both the Tenant and the Landlord to comply with this section as listed below:

Landlord and Tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Allow Tenant Reduced Rent

Having found the Tenant has failed to prove that he informed the Landlord of the problem with his window, that he has failed to prove the condition of his mattress and walls, as listed above, I find the Tenant's request for reduced rent to be premature. The Landlord has been informed of the Tenant's concerns during today's hearing on May 3, 2010, and in this written decision, therefore the Landlord is allotted a reasonable amount of time to attend to the Tenant's concerns.

Conclusion

I HEREBY DISMISS the Tenant's application, without 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: May 05, 2010.

Dispute Resolution Officer