DECISION

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

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act, that the Landlord make emergency repairs and general repairs, for compensation for damage or loss under the Act or tenancy agreement, for an Order permitting the Tenant to deduct the cost of repairs, services or facilities from the rent and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord claimed that the Tenant had reversed his given name and surname on the application and as a result, the Tenant's application is amended to make that correction. At the beginning of the hearing the Tenant confirmed that the dispute address indicated on her application was her mailing address and not the address of the rental unit. Consequently, the dispute address indicated on the Tenant's application is amended to remove her mailing address and put in its place the rental unit address.

At the beginning of the hearing the Landlord claimed that he had not received an evidence package of the Tenant's containing 3 photographs and written submissions in which the Tenant sought to amend her application to include a claim for moving expenses in the additional amount of $3,700.00. The Tenant said she sent this evidence package to the Landlord's address on his business card by registered mail. The Landlord claimed that he has moved and that his mail is no longer forwarded from his old address. Given that the Tenant has not properly amended her application to include the additional amount, in any event, I declined to allow her to amend her application however she may make a separate application for these expenses.

Issues(s) to be Decided

1. Are repairs required?
2. Is the Tenant entitled to compensation and/or a rent reduction due to the Landlord's alleged failure to provide a service or facility or to make repairs?

Background and Evidence

This fixed term tenancy started on December 1, 2009 and expires on November 30, 2010. Rent is $1,800.00 per month payable in advance on the first day of each month. The rental unit is located in a resort area that receives its water from a well.

The Tenant claimed that when she viewed the rental property with the Landlord (prior to entering into the tenancy agreement), he was working on the plumbing so she asked him if there were any problems she should know about but he said that there were none. The Tenant said when she moved in, however, she discovered that there had

been ongoing problems with water due to the deterioration of a well in the resort which supplied the rental unit. In particular, the Tenant said her water supply had a high concentration of iron in it which made it unsuitable for drinking and other domestic uses.

The Tenant said she received a copy of Council Meeting Minutes of the resort dated March 28, 2010 which indicated that an emergency meeting was called on that date to discuss "the critical condition of the domestic water well" and to try to find a solution. The Tenant said she would not have entered into the tenancy agreement had she known about the water problems. As a result of the water problems, the Tenant said she has had to buy bottled water for drinking and cooking at a cost to her of $12.44 per week. The Tenant said she uses the water supplied to the rental unit for bathing and washing clothes but that her lighter coloured clothes have now become discoloured due to the rust.

The Landlord claimed that he did not say anything about the water to the Tenant when she viewed the property in November of 2009 because he had no reason to believe there was a problem with the water. The Landlord said that none of his previous tenants had complained about the water. The Landlord also said that he received a copy of the Council Meeting Minutes from March 28, 2010 and only realized at that time that there was a problem with the well. The Landlord said that since that time a new well has been dug, however he admitted that the water is still discoloured because the filtration system has not been installed. The Landlord argued that the water was safe to drink and that it was the Tenant's choice to drink bottled water. The Landlord also argued that the Tenant's cost for bottled water was excessive.

The Tenant argued that the Landlord *did* know about the problems with the water at the beginning of the tenancy. The Tenant said she wrote the Landlord a letter dated January 18, 2010 asking him to reimburse her for the cost of her drinking water. However in a letter from the Landlord dated February 4, 2010, the Landlord responded,

> "To answer your major concern re the water at Duck Lake, I have been told that the water at Duck Lake is potable and drinkable but that they do have ongoing problems with colouration. Presently, I am advised that the water is much better....I did contact the property manager who said he would bring the water quality situation up at the next council meeting."

The Tenant also claimed that the Landlord advertised the rental unit as having a 2 car garage but that when she viewed the property, the garage was only large enough for one vehicle (due to some shelves that had been built on both sides). The Tenant said that the Landlord told her she could remove the shelves if she wanted a two car garage. The Tenant admitted that she entered into the tenancy agreement after viewing the garage. The Landlord denied that he told the Tenant she could remove shelves to restore the garage to a 2 car garage. The Landlord said the Tenant had an opportunity to view the garage prior to signing the tenancy agreement and agreed to accept it in its existing condition.

The Tenant further claimed that she has repeatedly asked the Landlord to remove some renovation materials (ie. paint cans, old blinds, pieces of linoleum and carpeting, tiles, tools, wood trim and ends, metal pieces and bags of fertilizer and scrap wood) from a storage area inside the rental unit, from the garage and outside on the rental property. The Tenant said she finally sent the Landlord a letter demanding that he remove these articles by March 20, 2010 but that to date he has failed or refused to do so. The Landlord said he has not removed these items from the rental property because he has not been able to get the Tenant's consent to do so. The Landlord said he is willing to remove them as soon as possible.

Analysis

While the Landlord may not have been aware of the specific problems with the well supplying water to the rental unit (and the resort) until March 28, 2010, I find on a balance of probabilities that he did know about the discoloured water being supplied to the rental when the Parties entered into the tenancy agreement. In particular, the Landlord admitted that he has owned the rental property for 15 years and stated during the hearing that water "colouration is known to happen during periods of high run off." Consequently, I find it more likely than not that discoloured water from iron has been an issue during the time that the Landlord has owned the rental property and that he was aware of it.

Section 27 of the Act says that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. I find that a supply of reasonably clean drinking water is essential to the Tenant's use of the rental unit as living accommodations. Consequently, I also find that the Landlord had a duty to bring any problems with the quality of the drinking water to the Tenant's attention prior to her entering into the tenancy agreement. I further find that the Landlord's failure to disclose this material fact constituted a misrepresentation for which the Tenant is entitled to seek compensation.

Although the Tenant argued that the water was unsafe to drink, I find that there is insufficient evidence to conclude that is the case. The Tenant provided some information from the internet that she said stated high concentrations of iron can be unsafe to consume. While this may be the case, the Tenant provided no evidence as to what the iron levels were in her water. Nevertheless, I find that due to the unpalatable smell and taste of the water, it is not reasonable to expect the Tenant to use it for drinking or cooking and that it was reasonable for her to purchase bottled water for those purposes.

The Landlord claimed that based on verbal information he received from a water supplier, the Tenant's cost for bottled water should only have been approximately $10.00 per month. The Tenant claimed that in January 2010, she provided the Landlord with receipts for her bottled water expenses for one week. Where the Parties' evidence

is in dispute, I prefer the evidence of the Tenant on this point. The Landlord's evidence was based on hearsay and therefore I find that it is unreliable. The Tenant's evidence on the other hand was submitted to the Landlord and was based on actual costs. Consequently, I find pursuant to s. 67 of the Act that the Tenant is entitled to compensation for water expenses of $50.00 per month for the months of December 2009 to May 2010 in the total amount of $300.00. I order pursuant to s. 65(1) of the Act that as long as the water colouration continues to be a problem, the Tenant will be entitled to reduce her rent by $50.00 per month commencing June 1, 2010 to compensate her for having to purchase drinking water.

The Tenant also claimed that her clothes have been damaged by washing them in the discoloured water. The Tenant gave no evidence, however as to why she chose to wash her clothes in discoloured water rather than to take them to a Laundromat, for example. Consequently, I cannot conclude that the Tenant has suffered further damages by using the water supply for other domestic purposes and I award no further amounts for compensation.

I find that even if the Landlord's advertisement misrepresented the size of the garage, the Tenant did not rely on that misrepresentation when she entered into the tenancy agreement. In particular, I find that the Tenant knew that the garage was only large enough for one vehicle when she entered into the tenancy agreement and she cannot now seek compensation on that basis. Consequently, this part of the Tenant's application is dismissed.

The Landlord said he would remove the items referred to above from the rental unit, the garage and the exterior of the rental unit on Friday, May 14, 2010 at 2:00 p.m. Consequently, I make no order for the removal of those items however, if the Landlord fails to remove those items, then the Tenant may reapply for that relief.

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. I order pursuant to s. 72 of the Act that the Tenant may deduct the total amount of compensation awarded in this matter of $350.00 from her next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is granted in part. The Tenant has made out a claim of $350.00 and may deduct that amount from her next rent payment. Commencing June 1, 2010, the Tenant may also deduct $50.00 per month from her rent for each month that the water supply to the rental unit is discoloured from iron.

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 11, 2010.

Dispute Resolution Officer