

DECISION

Dispute Codes RP, MNDC

Introduction

This hearing dealt with the tenant's application for repair orders and for compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to the submissions of the other party.

Issues(s) to be Decided

1. Are repair orders required of the landlord?
2. Has the tenant established an entitlement to monetary compensation from the landlord for damage or loss under the Act, regulation or tenancy agreement and if so, the amount?

Background and Evidence

I heard undisputed evidence as follows. The tenant began residing in the rental unit in September 1975. In 2004 the current landlord acquired the residential property. Until the current landlord acquired the property the tenant was paying rent of \$525.00 per month. The tenant has paid the following amounts for rent since July 2004:

July, August and September 2004	\$ 600.00 per month
October 2004 – October 2008	\$ 725.00 per month
November 2008 – November 2009	\$ 750.00 per month
December 2009 to present	\$1,000.00 per month

I heard that in 1975 the tenant and the former landlord had a written tenancy agreement. When the current landlord acquired the property the landlord and tenant had a discussion. The parties provided a different version of what transpired during the discussion in 2004; however, both parties acknowledge that a new written tenancy agreement was not entered into in 2004 and nor was a Notice of Rent Increase served upon the tenant to increase the rent beyond \$525.00 per month.

It was not in dispute that in May or June 2009 a *2 Month Notice to End Tenancy for Landlord's Use of Property* was issued to the tenant. The 2 Month Notice was withdrawn and the parties entered into a new tenancy agreement September 30, 2009. The new tenancy agreement indicates that a new tenancy was to commence on December 1, 2009 and the tenant would pay rent of \$1,000.00 per month. The tenant explained that she was distressed about the prospect of having to move out of the rental unit and on or about September 27, 2009 the tenant asked the landlord if there was any way she could stay. The tenant alleged that the landlord indicated she could stay if she would agree to pay \$1,000.00 per month for rent and the tenant agreed to this. On September 30, 2009 the landlord delivered a new tenancy agreement for the tenant to sign which she did. The tenant claims that she did not realize what she was signing as she signed it in a hurry and distracted by company she had when the landlord delivered the tenancy agreement to her.

In making this application, the tenant requested recovery of \$8,996.96 of overpaid rent which the tenant calculated to be the amount of the rent paid over and above the legislated rental increases.

The landlord was of the position that \$1,000.00 for the rental unit is a fair amount of rent as the rental unit is an end unit with the largest yard, storage and two parking spaces. The landlord submitted that it was the tenant who asked him what it would take to stay in the rental unit and have the Notice to End Tenancy withdrawn. The tenant acknowledged that the current rent of \$1,000.00 is a representative of its market value

but explained that she made this application as she is experiencing financial difficulty affording the payment of \$1,000.00 per month.

With respect to repairs, the tenant provided a list of items that require attention from the landlord and various photographs including:

- Water damage to ceiling
- Wall damage around windows in kitchen and bedrooms
- An unstable wall in the tenant's daughter's bedroom
- Mould on the walls of the hall closet and the living room
- The refrigerator is old and broken and does not operate properly

The tenant stated that she had made verbal complaints to the landlord and caretaker about the items that required repair. The tenant has not provided written request for repairs until this application was made.

The landlord stated that he was unaware of many of the deficiencies identified by the tenant but that he would attend to the issues. The landlord also stated that he was aware of wall repairs required around the windows and in the ceiling but that repair issues were outstanding because the tenant has made it difficult for the landlord's repair persons to tend to the necessary repairs. The landlord cited the tenant's request to be present during repairs and the quantity of the tenant's possessions in the rental unit as issues that have hindered repairs in the past. The landlord attributed mould to the amount of possessions in the rental unit being stored up against the walls and lack of air circulation.

As evidence for the hearing, the landlord submitted copies of receipts to demonstrate repairs and maintenance performed at the landlord's expense and photographs of the tenant's door to show messages posted on the tenant's door.

Analysis

Upon review of all of the evidence before me, I make the following findings and Orders.

Rent Increases

The tenancy agreement sets the amount of rent payable by a tenant. The amount of rent may change when the parties enter into a new tenancy agreement. However, where the same tenancy agreement continues, a landlord must comply with sections 40 through 43 of the Act to increase the rent payable by the tenant. A rent increase must be made on the approved form and served upon the tenant at least three months before the increase is to take effect. The amount of the rent increase is limited to the amount provided in the Residential Tenancy Regulation or as agreed upon by the tenant in writing or authorized by a Dispute Resolution Officer.

From the evidence before me, I do not find that the parties entered into a new tenancy agreement in 2004. Therefore, the tenancy agreement that was in effect since 1975 was in effect and continued to be in effect until such time a new tenancy agreement was entered into in 2009.

Having heard the parties entered into a new written tenancy agreement commencing December 1, 2009 I find the current monthly rent of \$1,000.00 is the current amount of rent payable by the tenant and that it remains set at \$1,000.00 per month until such time it is legally changed. I do not find the tenant signed the new tenancy agreement under duress. The tenant had the right to dispute the 2 Month Notice but chose to enter into negotiations with the landlord with respect to a new tenancy agreement.

Upon review of the evidence before me, I find the landlord did not serve the tenant with the approved form for a rent increase in 2004. By failing to issue a Notice of Rent Increase in the approved form, no part of the rent increase was valid or enforceable.

While I heard the tenant state that in later years the landlord did use proper Notices of Rent Increase, the amount of the rent increase would have been based upon a previous illegal rent increase. Therefore, I find that all of the rent increases that took place between 2004 and 2009 were in violation of the Act and not enforceable.

I calculate the tenant overpaid rent as follows:

<u>Months</u>	<u>Rent payable</u>	<u>Rent Paid</u>	<u>Overpayment</u>
July, August, and September 2004	\$ 525.00 x 3 months = \$ 1,575.00	\$ 600.00 x 3 months = \$ 1,800.00	\$ 252.00
October 2004 – October 2008	\$ 525.00 x 49 months = \$ 25,725.00	\$ 725.00 x 49 months = \$ 35,525.00	\$ 9,800.00
November 2008 – November 2009	\$ 525.00 x 13 months = \$ 6,825.00	\$ 750.00 x 13 months = \$ 9,750.00	\$ 2,925.00
Total overpayment			\$ 12,977.00
CLAIMED BY TENANT			\$ 8,996.96
MONETARY ORDER FOR TENANT			\$ 8,996.96

Section 43 of the Act provides that where a landlord collects a rent increase that does not comply with the requirements of the Act, the tenant may deduct the increase from rent or otherwise recover the increase. In light of the above, I find the tenant entitled to recover the rent increases paid in excess of \$525.00 for the months from July 2004 through November 2009 and I approved of the tenant's claim to recover \$8,996.96 from the landlord for overpaid rent.

I hereby authorize the tenant to withhold rent payments until such time \$8,996.96 has been recovered from the landlord. For certainty, where the tenant withholds rent otherwise payable, the amount to be deducted from this award is \$1,000.00 per month.

In the event the tenancy ends before the amount of this award can be recovered, the tenant is provided a Monetary Order in the amount of \$8,996.96 and the tenant may enforce the unrecovered balance in Provincial Court.

Repairs

Having heard that the parties have had difficulty scheduling times for repairs to be completed and upon review of the items requiring repair or attention I make the following orders to the parties:

1. The landlord must serve the tenant with a written 24 Hour Notice to Enter the rental unit to inform the tenant of the date and time repairs will be performed. The landlord must also indicate the nature of the repair and the steps the tenant must take to prepare for the repair, such as removing possessions out of the area. The Notice to Enter must comply with section 29(1) of the Act which provides for the following:
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
2. The tenant must not prohibit or otherwise delay the landlord's efforts to enter and make the necessary repairs.
3. Within 30 days of the date of this decision the landlord must initiate the repairs as identified by the tenant in this application, except for the mould issue which is addressed below.
4. With respect to the mould issue, the landlord must investigate the source of the mould within 30 days by taking appropriate steps to properly investigate. Upon

completion of the investigation the landlord must take appropriate action to remedy the source of mould.

Conclusion

The tenant was successful in establishing she overpaid rent between 2004 and 2009 and that she is entitled to recover \$8,996.96 from the landlord for overpaid rent. The tenant is provided a Monetary Order in this amount to ensure the tenant recovers the overpayment of rent. The current rent remains at \$1,000.00 per month until such time it legally changes.

With this decision I have issued Orders to both parties with respect to repairs to the rental unit.

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: June 3, 2010.

Dispute Resolution Officer