



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

DRI, MNDC, RP, PSF, RR and FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to dispute a rent increase; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; to authorize the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing.

The Tenant stated that she served the Landlord with notice of this hearing and her original Application for Dispute Resolution by registered mail on July 09, 2010. Although information on the Application for Dispute Resolution indicates that the Tenant has attached correspondence to the Application, she acknowledged that this attachment was not sent to the Landlord on July 09, 2010. She stated that the Canada Post website shows that this package was delivered on July 15, 2010. The Landlord acknowledged receiving this document by registered mail.

The Tenant stated that she amended her Application for Dispute Resolution to include a claim to recover the filing fee for the cost of this Application and to dispute an additional rent increase. She stated that she served the Landlord with the amended Application for Dispute Resolution by registered mail on August 07, 2010. She stated that she mailed this package to the same address as the package that was mailed on July 09, 2010. She stated that the Canada Post website shows that the package was not claimed by the recipient.

The Landlord stated that he did not receive the Tenant's amended Application for Dispute Resolution in the mail as he did not receive a notification from Canada Post advising him of the delivery, although he acknowledged being advised by the Tenant, on August 24, 2010, that a package had been mailed to him. He stated that he made

no attempts to retrieve this package as he believed it was a duplicate of the evidence package he received from his sister-in-law on that date.

The Landlord requested an adjournment of these proceedings on the basis that he did not receive notification that the Tenant's application had been amended. I find that the Tenant properly served the Landlord with an amended copy of the Application for Dispute Resolution when she sent it, by registered mail, to the Landlord on August 07, 2010. Given that there is a possibility that the notification may have been misdelivered by Canada Post, I accept the Landlord's evidence that he did not receive a notification from Canada Post advising him of the delivery.

The Tenant stated that she personally served a package of evidence to the Landlord's sister-in-law at the Landlord's residence on August 17, 2010, whom she acknowledged has not previously acted as an agent for the Landlord. The Landlord stated that his sister-in-law did not act as his agent during this tenancy and that she was house-sitting his residence while he was on holidays. He stated that he received this package of evidence from his sister-in-law on August 24, 2010. The Landlord requested an adjournment of these proceedings on the basis that he has not had sufficient time to review the evidence. He stated that he was unaware of the specifics of the Tenant's Application for Dispute Resolution and, specifically, that he was not aware that the Tenant was seeking compensation for loss of use of the storage space until he was provided with the evidence package.

I find that the Tenant did not serve the package of evidence to the Landlord in accordance with section 88 of the *Act*, as the Landlord's sister-in-law is not an agent for the Landlord and she does not reside at the Landlord's residence. As the Landlord acknowledged receiving the evidence package on August 24, 2010, I find that he was served the evidence on that date, pursuant to section 71(2)(b) of the *Act*.

In the interest of ensuring that the Landlord has a reasonable opportunity to respond to the Tenant's Application for Dispute Resolution, I find that this hearing will be reconvened at a later date to provide the Landlord with the opportunity to prepare a response to the Tenant's claims. In the interest of ensuring that the Tenant's safety is not endangered, the hearing commenced on this date and some of the issues raised by the Tenant were addressed and have been determined in this Interim Decision.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is attempting to impose a lawful rent increase; whether the Tenant is entitled to a monetary Order for loss of use of her storage area for a period of time; whether there is a need to issue an Order requiring the Landlord to make repairs to the rental unit; whether there is a need to issue an Order requiring the Landlord to provide services or facilities required by law; whether the Tenant has the right to reduce rent for repairs, services, or facilities agreed upon but

not provided; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 15, 2009 and that the Tenant is required to pay monthly rent of \$1,095.00 on the first day of each month.

The Tenant was originally seeking an Order requiring the Landlord to remove raccoons from the residential property. She stated that she believes the Landlord will have this issue remedied by August 31, 2010 and that the matter does not need to be discussed at this hearing.

The Tenant is seeking an Order requiring the Landlord to provide her with continual and uninterrupted use of a parking space. The Landlord and the Tenant agree that the Tenant is entitled to park in one of the parking spaces at the rear of the house as one of the terms of her tenancy. The parties agree that the Tenant has never been denied the right to the use of the parking spaces. Although the Landlord has asked the Tenant, on occasion, to park on the street the Tenant has not complied with that request and the Landlord has made no effort to force her to comply with that request. This matter was determined at the original hearing as I determined that the Tenant failed to establish the need for such an Order and the Landlord did not, therefore, need time to prepare a response.

The Tenant is seeking an Order requiring that lights in the rental unit be repaired. Although the Landlord was only provided specifics of this request on August 24, 2010, I concluded that it is reasonable to determine this matter at the original hearing given that it relates to a safety issue.

The Landlord and the Tenant agree that for a significant portion of this tenancy the lights in the common hallway and interior stairway of the residential complex did not work but that a light that is activated by a low-light sensor has now been installed. The Tenant is seeking an Order requiring the Landlord to install a switch so that these lights can be activated in the event that the low-light sensor malfunctions and for authorization.

The Landlord and the Tenant agree that the light on the front porch of the residential complex is not working. The Tenant is seeking an Order requiring the Landlord to repair this light.

The Landlord and the Tenant agree that there have never been lights to illuminate the area between the residential complex and the rear parking spaces. The Tenant submitted no evidence to show that safety and housing standards require this area to be lit. The Tenant is seeking an Order requiring the Landlord to provide lighting in this area.

The Landlord and the Tenant agree that the Landlord has installed a string of lights on her rear stairway in an attempt to illuminate this area, although the Landlord repeatedly unplugs the lights. The Landlord stated that he unplugs the lights because they are on during the day, which wastes electricity. He stated that he will not unplug the lights if the Tenant operates them with the use of a timer or other such device that ensures the lights are not operating when it is light outside and she moves them lower down the railing so that they do not constitute a safety hazard. The Tenant agreed to make these changes to the lights. The Tenant is seeking an Order requiring the Landlord to stop tampering with these lights.

The Tenant is also seeking authorization to hire an electrician if the Landlord fails to maintain the lights in good working order at any time in the future.

The Landlord and the Tenant agree that the railing on the rear stairs leading to the Tenant's rental unit has not been properly secured to one of the posts. The Landlord stated that it has not been attached as the Landlord cannot access the post, as the Tenant is storing her property in front of this post.

Analysis

I find that the Tenant has submitted no evidence to show that the Landlord is not permitting her to park in one of the parking spaces at the rear of the house, which is a term of her tenancy agreement. As there is no evidence that the Landlord is not complying with this term, I find there is no need to issue an Order requiring the Landlord to provide her with continual and uninterrupted use of a parking space. I note that there is nothing in the *Act* that prevents the Landlord from occasionally asking the Tenant to park elsewhere, providing he does not withdraw this service without proper notice and compensation. I decline to consider the Tenant's request for compensation for "future loss" of this service, as that matter would need to be determined when, and if, the Landlord fails to comply with the *Act* in regards to providing parking.

I find that there is currently a light in the hallway and stairway of the residential complex, which operates on a low-light sensor that provides adequate light in this area during hours of darkness. I do not find that it is also necessary to have a light switch to operate this light and I therefore dismiss the Tenant's application to have repairs made to this light.

Section 32(1) of the *Act* requires landlords to 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 a tenant. I find that the Landlord is obligated to ensure that lights in common areas are properly maintained.

I find that the light on the front porch of the residential complex is not working. I find that the Landlord is obligated to ensure lights in common areas of the building are functioning properly, pursuant to section 32(1) of the *Act*. I therefore Order the Landlord to repair this light prior to September 30, 2010. In the event that the light is not repaired by September 30, 2010 I hereby authorize the Tenant to reduce her monthly rent by \$10.00 on October 01, 2010 and to continue to reduce each subsequent monthly payment by \$10.00 until such time as the repairs are complete.

I find that the Tenant submitted no evidence to show that safety and housing standards require the Landlord to install lights in the rear of the house at a location where lights have not previously been installed. As there is no evidence to show that the *Act* requires the Landlord to provide lighting in this area, I dismiss the Tenant's application to have such lighting installed.

I find that the Landlord and the Tenant verbally agreed that the Tenant will install a timer or similar device on the string of lights located on the stairway leading the Tenant's rental unit; that the Tenant will move the string of lights lower on the railing in a manner that does not create a safety risk; and that the Landlord will not unplug the lights providing the lights are not operating during daylight hours. I find that this mutual agreement becomes a term of their tenancy agreement and that both parties must comply with this term unless the Tenant elects to remove the lights.

I decline to issue an Order authorizing the Tenant to call an electrician if the Landlord fails to maintain the lights in the residential complex in the future. Both parties are hereby advised, however, that the Tenant retains the right to file another Application for Dispute Resolution if there are future problems with lighting issues and that she can, in certain circumstances, seek emergency repairs pursuant to section 33 of the *Act*.

I find that the Landlord is obligated to ensure that the stair railings must be properly and safely installed, pursuant to section 32(1) of the *Act*. I therefore Order the Landlord to securely attach the railing on the rear stairs to the all of the posts that are designed to support that railing prior to 6:00 p.m. on August 28, 2010. To facilitate this repair, I Order the Tenant to remove any lights she has attached to the subject railing and to move any personal items that are currently stored within six feet of the post that is currently not attached to the railing prior to 8:00 a.m. on August 28, 2010 .

Conclusion

The Landlord and the Tenant are hereby advised that this hearing will be reconvened at the time and date on the attached Notice of Reconvened Hearing. Both parties are required to appear at the reconvened hearing and neither party is obligated to serve the Notice of Hearing on the other party.

The Tenant's claim for compensation for the loss of use of her storage facility; her application to dispute the additional rent increase; and her application to recover the

filing fee will be determined at the reconvened hearing. I find that there is no need for the Tenant to re-serve the Landlord with an amended copy of the Tenant's Application for Dispute Resolution, as these issues have been clearly explained to the Landlord.

This interim 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: August 27, 2010.

Dispute Resolution Officer