



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, MNSD, OLC, ERP, RP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy, for a monetary order, and for an order to have the landlord make repairs and emergency repairs.

Two hearing were conducted via teleconference. The first hearing was held on August 19, 2010 at which time the tenant attended at the scheduled start time and the landlord attended 25 minutes later. As the tenant had to go back to work the parties agreed to an adjournment to allow the landlord time to respond to the tenant's application and evidence.

The second hearing was set for today's date and was attended by the tenant at the start of the hearing but the landlord did not attend. As the notice of hearing documents were sent to both parties directly from the Residential Tenancy Branch on August 19, 2010 I am satisfied the landlord was sufficiently served with notice of the reconvened hearing time.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a Notice to End Tenancy for Unpaid Rent; to an order to have the landlord to make repairs and emergency repairs; to a monetary order for compensation for damage or loss; for double the amount of the security deposit; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32, 33, 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in March 2010 as a month to month tenancy for the monthly rent of \$1,450.00 due on the 1st of the month, a security deposit of \$725.00 was paid. No written agreement was ever provided to the tenants. The tenant vacated the rental unit and surrendered possession to the landlord on August 31, 2010.

No evidence was presented that the tenant failed to pay rent or that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued to the tenant.

The tenant states the landlord had informed the tenants at the start of the tenancy that he had not slept in the master bedroom when he lived there but he did not explain why. After the tenants moved they found there were bats in the attic space above the master bedroom with a rotting, sagging piece of plywood covering the entrance to the attic space.

The tenant also notes that the landlord failed to point out to the tenants prior to the tenancy agreement and start of the tenancy that the deck was unusable as it was badly rotted. The tenant also stated the family could not use the garage, deck or yard as a result of the condition of these areas.

The tenant seeks the following compensation:

Description	Loss of Value of Tenancy	Total
Inability to use Deck	\$50.00/ month	\$250.00
Inability to use Garage	\$100.00/month	\$500.00
Inability to use Yard	\$40.00/month	\$200.00
Double security deposit for not providing tenancy agreement/condition inspection		\$1,450.00
Total		\$2400.00

Analysis

In the absence of any contrary evidence or testimony from the landlord, I accept the tenant's accounting of the condition of the rental unit. In the absence of any evidence regarding a 10 Day Notice to End Tenancy, I cancel the notice as unenforceable.

However, the *Act* does not allow for return of the security deposit or doubling of the security deposit to compensate for the landlord failing to provide a tenancy agreement or condition inspection.

I also find the tenant suffered no loss or damage as a result of the landlord's breach of Section 12 (requirement to prepare a tenancy agreement in writing) or Section 23 (requirement to complete a condition inspection at the start of a tenancy). As such, I dismiss this portion of the tenant's application. This dismissal has no impact on the tenant's right to the return of the security deposit in accordance with Section 38 at the end of the tenancy.

I find the value of the tenancy was decreased by virtue of the conditions noted by the tenant and I further find the valuation of the decrease in value submitted by the tenant to be a reasonable expectation.

Conclusion

Based on the findings above I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,000.00** comprised of \$950.00 compensation for the decreased value of the tenancy and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: September 01, 2010.

Dispute Resolution Officer