

INTERIM DECISION

Dispute Codes MNDC RP FF

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 make repairs to the unit, site, or property, and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenant to the Landlords, was done in accordance with section 89 of the *Act*, served personally on July 20, 2010. The Landlord confirmed receipt of the hearing package.

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

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order in accordance with section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord make repairs in accordance with section 62 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on September 1, 2009. Rent is payable on the first of each month in the amount of \$1300.00 and the Tenant paid a security deposit prior to September 1, 2009 in the amount of \$650.00.

Tenant's testimony:

The Tenant advised that she had the professional who inspected the carpets standing by to testify as her witness. She requested that he be added to today's hearing. I explained that we would proceed with her testimony and would determine if the witness was required after hearing testimony from both participants.

The Tenant confirmed that the Landlord's Mother is the person who provided her access to the unit at the onset of the tenancy and that the Tenant requested the Mother complete a move-in inspection report. The Mother walked through the unit with her and confirmed that the carpets in the basement were not cleaned prior to her tenancy.

The Tenant referred to her documentary evidence in support of her testimony which included among other things copies of hand written notes and letters she sent to the Landlord along with photographs that were taken on two different dates, December 24, 2009, and June 2010.

On September 3, 2009, she wrote the Landlord a letter listing all of the items that she required repaired or attended to which included her request to have the carpets cleaned. She confirmed that she attended a move-in inspection with the Landlord on September 7, 2009, and that she signed the report. The Landlord has completed all of the things she requested in her September 3, 2009, letter; however he has failed to replace the carpets. She stated the smell is so strong in the two rooms downstairs that her son cannot use these two rooms and is forced to sleep upstairs. She confirmed she is also seeking compensation for a leak that occurred in December 2009. As supported by her photos, the drain pipe that is located underneath the stairs was leaking and that the Landlord attended the rental unit on December 24, 2009 to fix the problem however he was not able to find out where the water was coming from. The Landlord asked the Tenant to watch for additional leaks and to let him know if it leaked again. It was not until the Landlord attended a week or so later that they determined that the leak was coming from the drain pipe located under the stairs. The Landlord repaired the leak as soon as he found out where it was coming from.

The Tenant is seeking compensation in the amount of \$1,450.00 which represents \$50.00 per month for each of the three rooms that she was not able to use prior to this hearing. She argued that she had a professional (her witness) inspect the two rooms with carpet and that he looked at the carpets with a special light and could see urine stains on the carpets and even up the lower end of the drywall. She argued that the carpets were dampened when water leaked into the basement from the outside. Even though the Landlord had the carpets professionally cleaned, and she has used her own personal carpet cleaner, the smell remains. She argued that when she viewed the rental unit the previous tenant had let her cats have free roam of the basement so she suspects it was the previous tenant's cats that caused the damage.

The Tenant argued that since she filed for dispute resolution the Landlord served her a letter for a notice of rent increase and that she demanded the Landlord provide her with a proper notice on a Residential Tenancy Branch form. She argued that the Landlord has told her that she has brought a cat into the rental unit illegally and questioned how he knew it was not her cat that caused the damage. The Tenant stated that she could not find her tenancy agreement to provide testimony about the terms of her tenancy but that she acquired her cat through the SPCA and before they would release the cat to her they called her Landlord and confirmed she was allowed to have the cat.

The Tenant confirmed she has never requested the Landlord replace the two carpets in writing but that she has requested verbally on several occasions. She stated that she does not have an exact record of when she first requested the carpets be changed but that she believes it was around the end of October 2009.

Landlord's testimony

The Landlord confirmed the Tenant requested the carpets to be cleaned and that he complied and even used the carpet company she requested. He began to document the Tenant's requests when he realized that she was going to be this demanding. He

argued that his first recollection of her verbally requesting the carpets be removed and new carpets installed was May 2010.

He confirmed the carpets were stained when they purchased this house three years ago and that the stains were present when the Tenant viewed the unit prior to occupying it. The house was built in approximately 1974. There were three or four tenancies prior to this Tenant taking occupation of the unit.

To his knowledge there has only been one incident of damp carpet and he attended the unit when he was first advised and made sure to lift the corner of the carpet to ensure there was no mould underneath. He advised that after the Tenant complained about excessive moisture in the one room he went to great expense to remove the drywall, all of the insulation only to find the walls were not moist and there was no mould. The Walls have since been reinsulated and dry walled.

The Landlord confirmed that he attended the rental unit on December 24, 2009 and that he attended a second time to attend to the leak from the drain pipe. The second time he attended the Tenant had the dishwasher going which is how they determined that the leak was coming from the main drain pipe. He fixed the pipe as soon as he determined the source of the leak and this repair occurred sometime between the end of December 2009 and early January 2010.

The Landlord stated that he attempted to resolve this matter prior to the hearing whereby he offered the Tenant, in writing, that he would remove and replace the carpet in the two basement rooms, and he would agree not to increase the Tenant's rent for a period of one year. The Tenant refused the Landlord's offer.

The Tenant confirmed that she refused the Landlord's offer to settle prior to today's hearing because she is seeking a monetary award. She also confirmed the letter of Notice of Rent Increase was received before she filed for dispute resolution. The

Tenant questioned if she could provide evidence for another issue which relates to her concern about the level of moisture in the rental unit.

Analysis

The hearing time expired prior to the submission of all of the evidence, and prior to hearing testimony by the Tenant's witness. Therefore this matter is adjourned to a later date. The parties were advised that no additional evidence will be accepted, pertaining to this claim and the future hearing will continue on the merits of this application. The parties were instructed to have their witness sign into the hearing at the beginning of the reconvened hearing to provide their testimony.

Conclusion

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing.

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 03, 2010.

Dispute Resolution Officer