

DECISION

Dispute Codes MNDC RP

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, and to obtain an Order for the Landlord to make repairs to the unit, site or property.

The Landlord confirmed receipt of the hearing documents from the Tenant.

The Landlord, their Agents and the Tenant appeared, 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 under section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord make repairs under section 32 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony is the month to month tenancy began on February 1, 2008. The monthly subsidized rent is payable on the first of each month and currently the rent is paid directly to the Landlord from Income Assistance. The rent will be raised from \$404.00 to \$469.00 effective November 1, 2010. The Tenant paid a security deposit of \$318.00 on February 1, 2008 which was an amount based on the market rent.

The Tenant referred to her evidence in support of her testimony which included a typed statement, a copy of a completed work order issued by the Landlord on April 12, 2010, a list of her monetary claim which is comprised of \$200.00 for moving transportation, \$500.00 for labour to move, and \$150.00 for costs to transfer bills such as hydro and cable which totals \$850.00.

The Tenant stated that she needs to move because she is concerned that her rental unit is not structurally sound. She argued that there had been a water leak which drained from the upstairs bathroom down into the ceiling above the kitchen and now the kitchen ceiling is bowed down as much as three inches and has shifted. She states that an electrician was at the unit and refused to install the light in her kitchen after the kitchen light sparked from water leakage. She reported her maintenance requests on April 12, April 13, August 4, and August 6, 2010 and the Landlords have refused to repair the unit. She confirms that a building inspector attended the unit in September 2010 but that he only spent four to six minutes in her unit.

The Landlord and Agents testified and referred to their evidence which included among other things a copy of a building inspection report dated September 8, 2010 which was signed by a licensed inspector, a statement listing the chronological events, and copies of work orders.

The Landlord and Agents provided testimony that they have attended the rental unit to make repairs as requested by the Tenant. Upon inspecting the unit they opened the bathroom door and entered to find that it was full of moisture, the ceiling fan was not running, the floor mat was wet, and the window was not open. The Maintenance person instructed the Tenant to leave the fan running for at least thirty minutes after the shower is used and to leave the window open in order to provide ventilation and prevent the mould. The Landlords stated they have complied with the Tenant's maintenance requests and have gone above her requests and provided her with a thicker shower curtain to assist in reducing the amount of water on the floor during a shower. They have attempted to complete the repair to the ceiling. They have patched, mudded,

sanded, and primed the area which only requires painting to be completed. However, the Tenant refused the Maintenance Person access to the unit on May 7, 2010 so the painting remains unfinished.

It is the Landlords' position that the rental unit is structurally fine and the water leak and ceiling have been repaired and now only requires painting.

In closing the Tenant stated that she felt the Maintenance Person parks his truck in front of her unit all of the time and that he was harassing her, which is why she refused him accesses to the unit. She had a previous disagreement with a neighbour however that has now been resolved. She is seeking the monetary claim so she can move and be transferred to a two bedroom unit.

The Maintenance Person replied that he has a truck and trailer and that when he attends the complex to complete repairs he needs to occupy several parking stalls with his vehicle and trailer and it is usually the ones in front of the Tenant's unit that he can park the unit. The Agent confirmed that they attend the complex during the evening if they need to attend to noise complaints or maintenance emergencies as well as during the day to attend to normal business. The Landlord stated that it is their position that the building has been repaired as required, is structurally fine, and the Tenant will not be transferred to another unit.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. In this case the evidence supports that a licensed professional inspected the unit on September 8, 2010, where he determined the unit meets or exceeds the provincial building code and confirmed the repairs require painting in order to be completed. Based on the aforementioned I find the Tenant has failed to establish the test for damage or loss, as listed above, and I hereby dismiss her claim for damages.

The evidence supports there has been a breakdown of communication between the Tenant and the Maintenance person whereby the Tenant has refused access to the unit for repairs to be completed. Sections 28 (c) and 29 of the Act speaks to the landlord's right to enter the unit while Section 32 speaks to the landlord's obligation to repair and maintain the unit. Based on the aforementioned I hereby Order the Landlord to complete the repairs to the kitchen ceiling and provide the Tenant with a minimum of 24 hour written notice of entry to the unit which lists the purpose for entering (in this case to complete the repairs to the kitchen ceiling), the date and time of the entry between the hours of 8:00 a.m. and 9:00 p.m., in accordance with section 29 (b) of the Act.

Conclusion

I HEREBY DISMISS the Tenant's monetary claim, without leave to reapply.

I HEREBY ORDER the Landlord to complete the repair to the kitchen ceiling, no later than October 1, 2010.

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 22, 2010.

Dispute Resolution Officer