

DECISION

Dispute Codes MNDC ERP RP RR 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 emergency repairs for health or safety reasons, to make repairs to the unit site or property, to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on August 19, 2010. The Landlord confirmed receipt of the hearing documents and a copy of the Tenant's written statement. The Tenant confirmed that she did not send the Landlord copies of her photographs. The Tenant confirmed receipt of the Landlord's evidence.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Is the Tenant entitled to a monetary order in accordance with section 67 of the *Residential Tenancy Act*?
2. Is the Tenant entitled to Orders to have the Landlord make emergency repairs to the stove and furnace and make repairs to windows and the countertop in accordance with section 32 of the *Residential Tenancy Act*?

3. Is the Tenant entitled to reduced rent or rent abatement for repairs agreed upon or required but not provided in accordance with section 65 of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement effective July 1, 2010. Rent is payable on the first of each month in the amount of \$1,000.00 and the Tenant paid a security deposit of \$500.00 on June 30, 2010. No move-in condition inspection report was completed at the onset of the tenancy.

The Landlord's witness provided testimony that he has conducted renovations on the rental unit for the Landlord. There was one incident that he attended the rental unit to conduct repairs and the Tenant followed him around and then asked him to leave because she had to go to work. He stated that his partner also had to leave the rental unit once while he was conducting electrical work. He wanted to make it clear that the Tenant misquoted something he had said. He stated "I said if you have so many complaints you shouldn't have moved in". With respect to the windows the witness stated that he believes someone hit one of the windows with a rubber hammer and the frame is now bent and that is why the window will not open. He confirmed that he was the person who put the tarp on the stove which was left outside and has now been exposed to rain so it is his impression that the electric circuit boards are now ruined due to water exposure.

The Tenant testified and confirmed that she did ask the electrician to leave because it was 9:30 p.m. She stated he arrived late at 7:45 p.m. to begin the job and she felt that 9:30 p.m. was late enough in the evening to be working in her residence. She is of the position that she has never refused anyone entry that she was given proper prior notice of attending.

The Tenant is seeking \$200.00 as compensation for the three months that she has had to live without an oven. She stated that she informed the Landlord of the problem right away and that it took six weeks before they came to repair it and found the valve was clogged. The stove upper burners work however the oven is still not repaired. The Tenant filed her application for dispute resolution on August 19, 2010 as she felt her concerns were not being heard by the Landlord. The Landlord called her August 20, 2010, while the Tenant was on the ferry, to advise her that a stove was being delivered and requested the Tenant allow the stove to be stored inside until it could be installed. The Tenant was on the ferry and could not accommodate the Landlord's requests as there was no storage inside. The Landlord's contractor left the stove outside and put a tarp on it. A new electric fan was installed on September 27, 2010.

The furnace was serviced and repaired on August 27, 2010 and the kitchen counters were repaired on September 27, 2010. The Tenant argued that only two of the seven windows open freely enough for her to open them. The window the witness referred to is still sealed shut with paint. She states that the witness painted the exterior and inside of the windows closed. She is seeking to have all seven windows open freely. She confirmed she is required to cut the lawn however the lawn mower provided by the Landlord does not work. She also agreed to water the flowers. The Tenant stated that she is of the opinion that the Landlord may not be aware of the requirements under the Act as she has posted notices of entry as early as 7:00 a.m. on a Saturday or Sunday and as late as 9:00 p.m.

The Landlord testified that the house is approximately 80 years old. She has ordered a new stove and it is scheduled to be delivered next week. She has not yet arranged delivery of the stove with the Tenant. She confirmed that she has posted notices of entry as early as 7:00 a.m. and denies posting notices for entry after 9:00 p.m. She confirmed that she attended the rental unit and waited outside for the furnace contractor to attend however the Tenant refused her entry into the rental unit to monitor the contractor's work. She also confirmed that she knocked on the Tenant's door, without

notice, to inform the Tenant that her contractor was next door and asked if he could come in to look at the windows. She acknowledged that there was a lawn mower left at the rental unit that is broken.

The Agent confirmed that the Landlord has purchased a new gas stove that will be delivered next week and installed if they have agreement with the Tenant. He confirmed the windows still need to be addressed. The Agent is of the opinion that the Tenant's motivating factor is a reduction in rent.

Analysis

The Tenant confirmed she did not provide the Landlord with copies of her photographic evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the respondent Landlord has not received copies of the Tenant's photos I find that the Tenant's photographs cannot be considered in my decision. I did however consider the Tenant's written statement that was served to the Landlord.

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.

Section 13 (1) states that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Therefore, in accordance with section 62 of the Act, I Order the Landlord to prepare in writing, a tenancy agreement that meets the form and content requirements set out in the Act no Later than October 22, 2010. The Landlord and Tenant are required to sign the tenancy agreement and the Landlord must

provide the Tenant a copy of the signed tenancy agreement no later than October 31, 2010. The tenancy agreement must include clear written terms relating to the exterior maintenance to be performed by the Tenant, such as cutting the lawn and watering of flowers, that Landlord will provide and maintain a lawnmower for Tenant's use, as well as all of the required standard terms, such as the amount and date rent is payable.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas, free from significant interference.

Section 29 of the Act provides a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not before 30 days before the entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable, the date and time of the entry, which must be between 8:00 a.m. and 9:00 p.m. unless the tenant otherwise agrees; or an emergency exists and the entry is necessary to protect life or property.

Based on the aforementioned, and in accordance with Section 32 of the Act, I hereby Order the Landlord to install and provide the Tenant with an oven that has working stove top burners and a working oven, no Later than October 20, 2010. The Landlord is required to provide notice of entry to have the new oven installed, in accordance with section 29 of the Act, and the Tenant is required to allow the Landlord access as requested providing the notice complies with the Act.

In accordance with section 29 and 32 of the Act, I hereby order the Landlord to repair or maintain all seven of the windows in the rental unit, having regard to the age of the unit, so that they can be opened and closed as freely as possible no later than November 5, 2010.

The Tenant is hereby ordered to allow the Landlord, her Agents, or contractors to access the rental unit, in accordance with section 29 of the Act. The Landlord is entitled to accompany contractors that are attending to maintain or repair the rental unit to oversee the work being performed on her property.

Section 65 of the Act provides that a tenant's past or future rents may be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement while Section 62 provides me the authority to determine such an amount. The evidence supports the Tenant was restricted to using the stove top burners for cooking while awaiting the repair of the oven and had to deal with the inconvenience of having to wait for the counter to be replaced. While this is an inconvenience the Tenant was still provided the opportunity to reside in the rental unit with a limited restriction or limited loss to the value of her tenancy. That being said I hereby award the tenant a rent abatement of \$100.00, an amount of \$25.00 per month for July, August, September, and October 2010.

If the Landlord fails to comply with the above mentioned orders in the specified time frame then the Tenant will be at liberty to make application for further compensation.

The Tenant has been successful with her application, therefore I award recovery of the \$50.00 filing fee.

I have included in the Landlord's and Tenant's decisions a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

I HEREBY ORDER the Landlord and Tenant to comply with the above mentioned Orders and the *Residential Tenancy Act* pursuant to section 62 of the Act.

The Tenant may deduct the one time amount of \$150.00 (\$100.00 rent abatement + \$50.00 filing fee) from her future rent payment.

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: October 12, 2010.

Dispute Resolution Officer