



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, RP, ERP, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a Monetary Order for money owed as a result of damage or loss under the *Act*, to request action by the Landlord to make repairs to the unit, allow the Tenant a rent abatement for inconvenience and loss of use, to request the Landlord make emergency repairs for health and safety reasons, and to order the Landlord to comply with the *Act* or agreement.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served by registered mail on August 30, 2010. The Landlord was deemed to be served the hearing documents on that date five days later. The Landlord further acknowledged the delivery of those documents and the amended Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the Tenant is entitled to monetary compensation under section 67 of the *Residential Tenancy Act*.
- Whether an Order for repairs to the unit is warranted pursuant to section 32 of the *Residential Tenancy Act*.
- Whether the Tenant is entitled to a reduction in rent for services or facilities agreed upon but not provided under section 65(1) of the *Residential Tenancy Act*.
- Whether the Tenant is entitled to monetary compensation under section 72(1) of the *Residential Tenancy Act* to recover the filing fee from the landlord for the cost of this application.

Background and Evidence

The tenancy began on November 1, 2009, for a fixed term ending on October 31, 2010, to continue on a month to month basis thereafter. The monthly rent is \$1,850.00 per month, payable of the first day of each month and the Tenant paid a security deposit of \$925.00 in October, 2009.

The Tenant testified and supplied evidence by way of the tenancy agreement that rent included utilities of water, heat, power, internet, and television. The Tenant testified since the tenancy began, he has had problems with two leaky toilets, an old, leaky refrigerator and that he has had to replace the stove and hood. The Tenant testified that the toilets and refrigerator are still unrepaired after repeated requests to do so.

The Tenant further stated that with the rotten wood, rotten railing and exposed nail heads, he has lost the use of the deck for at least the summer months. The Tenant testified and his father confirmed that the Tenant's father sustained an injury when the top step broke and the handrail gave way. The Tenant testified and the Landlord confirmed that the deck is still not repaired as of the day of the hearing after repeated requests.

The Tenant testified that the furnace has not been serviced since 1999 and he has requested that it be serviced for health and safety reasons.

The Tenant testified that the Landlord did not promptly pay the utilities and remained unpaid until very recently, when the Landlord paid half after numerous requests. The Tenant testified that he agreed to forgo one half of the utilities if the promised repairs were made, but now wants reimbursed \$2,006.11 as the repairs have not been made. The Tenant further testified and gave evidence that the satellite for television had not been installed, pursuant to the agreement terms, and is requesting \$150.00.

The Tenant and the Landlord testified that the parties have now entered into a new agreement whereby the utilities would not be provided. I note that neither party submitted a copy of the new agreement.

The Tenant testified that the electrical wiring presented a fire danger, and after repeated requests to the Landlord to have it fixed, he, the Tenant, incurred expense in the amount of \$421.12 to repair the electrical outlets.

The Landlord testified he has tried to have contractors go to the property to have the repairs made, but that the Tenant created a situation where the contractors did not feel safe and/or were met with hostility. I note that the Landlord did not supply evidence of the alleged unsafe or hostile situation.

The Landlord testified that he reimbursed the Tenant one half of the utilities and that said payment would be in satisfaction of the full amount owed. The Landlord

acknowledged that the repairs needed to be done and would be happy to fix them. The Landlord testified that he would reimburse the Tenant the charges for the electrical repair.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

In regards to an Applicant's right to claim damages from the other part, Section 7 of the *Act* states that if the Landlord or Tenant does not comply with this *Act*, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under sections 32, 33 and 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists.
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement.
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord is required under section 32 of the *Act* to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation. I find the Landlord has breached section 32 of the *Act* and I **order** the Landlord to do the following in the rental unit:

1. Immediately repair or replace the deck;
2. Immediately repair or replace the 2 leaking toilets;
3. Immediately repair or replace the refrigerator; and
4. Immediately have the furnace serviced.

The Tenant wrote to the Landlord and verbally numerous times requesting these repairs be made. I find that the Landlord has failed to act in a timely manner to address these repairs, despite the ongoing requests of the Tenant. I find there has been an ongoing breach by the Landlord for 11 months, since the beginning of the tenancy, regarding the unpaid utilities, toilets and refrigerator. I **order** the Landlord to compensate the Tenant in the amount of \$50.00 per month retroactively for 11 months for the lack of full use of the toilets, refrigerator and unpaid utilities, in the amount of **\$550.00**. I find that **retro-active rent abatement** is justified applicable to rent already paid and may be deducted as described below.

I find that the testimony and evidence supports that the deck has been in disrepair since at least July 2010 and that the Tenant claimed a substantial devaluation of the tenancy and a loss of use value over the summer months of \$1,500.00. The Landlord did not refute this amount or the lack of repair and I therefore accept the evidence and testimony of the Tenant that the loss of use value is **\$1,500.00**. I further find that until the deck and other repairs are made, the Tenant continues to suffer a devaluation of the tenancy at the rate of **\$200.00** per month. I find that **retro-active rent abatement** is justified applicable to rent already paid and may be deducted as described below.

I find that the Landlord was contractually obligated to pay the utilities to the Tenant and did not do so. I have no evidence to support the Landlord's assertion that the payment made of one half the utilities was in full satisfaction of the amount owed and I accept the testimony and evidence of the Tenant that the amount paid was only in lieu of timely repairs made. As I find that the repairs have yet to be made, the Landlord owes the Tenant for unpaid utilities the amount of **\$1,606.11**, as I have not accepted the Tenant's claim for an average estimate for Terasen Gas of \$110.00 for August and September and \$290.00 for an average estimate for August and September for B.C. Hydro.

Electrical outlet repair - \$421.12 – Pursuant to section 32(5) a Landlord must reimburse a Tenant for amounts paid for emergency repairs. I find in favor of the Tenant's monetary claim of \$421.12

Filing Fee - \$50.00 – I find that the Tenant has succeeded in large part and that he should recover the filing fee from the Landlord.

I find that the Tenant has established a total monetary claim of **\$4,127.23**, comprised of **\$2,050.00** for retroactive rent abatement as stated above, **\$1,606.11** for unpaid utilities, **\$421.12** for emergency electrical outlet repair and the **\$50.00** fee paid by the Tenant for this application.

Under section 67 of the Act, I **direct** the Tenant satisfy the monetary claim of \$4,127.23 by withholding rent of \$1,850.00 for November 2010, \$1,850.00 for December 2010 and \$427.23 in January 2011.

To address the issue of the continuing devaluation of the tenancy at the rate of \$200.00 per month, I also order that the monthly rent be reduced beginning in January 2011 to **\$1,650.00** until such time as the Landlord completes all the above ordered repairs and files and pays for an Application for Dispute Resolution and proves the above work has been completed in a good and workmanlike manner, and receives an order from a Dispute Resolution Officer that the rent may return to \$1,850.00 per month.

Conclusion

The Tenant is granted a monetary claim in the amount of \$4,127.23, including the filing fee for this proceeding and is directed to withhold this amount from upcoming payments of rent.

The Tenant is entitled to rent abatement of \$200.00 per month until repairs are made to the rental unit.

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 18, 2010.

Dispute Resolution Officer