



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNR, MNDC, RR

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order permitting her more time than provided in the *Act* for applying to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

At the outset of the hearing, the landlord stated that the notice to end the tenancy issued on September 2, 2010 is withdrawn, and I therefore order that the notice to end the tenancy is cancelled. Further, the tenant's application for an order permitting the tenant more time to apply to cancel the notice to end the tenancy is allowed.

The tenant also stated that the claim for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement is reduced from \$400.00 to \$200.00 because the landlord recovered the amount of \$200.00 from a contractor for the benefit of this tenant.

The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information provided by the parties has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began on July 1, 2003 and the tenant still resides in the rental unit. Rent in the amount of \$1,203.00 is payable in advance on the 1st day of each month. The parties disagree as to rental arrears; the tenant believes there are no rental arrears and the landlord stated that currently arrears remain outstanding at \$48.00. The landlord also collected a security deposit from the tenant on July 8, 2003 in the amount of \$507.00.

The tenant testified that the landlord had roofing repairs done to the apartment building, and the scaffolding was entirely in her yard. The scaffolding went up about May 10, 2010 and remained there until about July 15, 2010. She stated that she started to complain to the landlord in June and suggested that the scaffolding didn't need to be there constantly when the tradespersons didn't work every day.

The tenant further testified that "street people" were accessing her yard via that scaffolding. The contractor then put up ply-wood, but it didn't entirely block access to the scaffolding, and about 4 times after that, people still had access to her yard. She then emailed the landlord, who responded that the tenant could move out, without considering the amount of time and money the tenant spent cleaning and gardening around her unit and around the complex. She stated that she found the landlord's comment very distressing.

The tenant also provided photographs of her yard before and after the roofing repairs were done. The photographs depict a very well kept back yard and gardens before the scaffolding went up, and damaged gardens riddled with debris and broken decorations after the scaffolding went up. The tenant further testified that her back yard was unusable during the time that the scaffolding was in place in her yard, and claims \$200.00 for the devaluation of the tenancy for the period of May 10 to July 15, 2010,

being almost 10 weeks. She provided an invoice to the landlord, a copy of which was also provided in advance of this hearing, which is dated September 9, 2010 and contains entries for yard clean-up, damaged or discarded stepping stones, a large terracotta planter and 10 damaged perennial plants, for a total of \$400.00.

The landlord's agent testified that the scaffolding was not up when no work was being done, except that inspections may have taken a few days. She further testified that the work had to be done from this tenant's back courtyard and that is where the scaffolding had to be in order to complete the project. She further stated that she does not believe that street people were able to access the tenant's yard. A gate had been removed, so there is a solid fence, and when the tenant complained that she feared someone could access her yard, the landlord's agent had the contractor look at the issue. He then put up plywood to prevent access, and she stated that it was not possible to climb the scaffolding, no foot holes were present, nor was access possible.

Analysis

I have reviewed the evidence of the parties, including the photographs provided by the tenant. The tenant has been reimbursed by the contractor for the broken garden decorations, and the tenant advised at the outset of the hearing that her application for compensation should be reduced by \$200.00 for payment of those items. The issue before me is whether or not the tenancy has been devalued by the inability of the tenant to use the back yard. The criteria normally considered in awarding damages for loss of quiet enjoyment, or devaluation of the tenancy include:

- the amount of disruption suffered by the tenant;
- the reason for the disruption;
- if there was any benefit to the tenant for the disruption; and
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

I also must consider the landlord's responsibility to provide a rental accommodation that is suitable for tenancy for all tenants in the complex, and I find that fixing the roof was a necessary repair.

The landlord did not dispute the evidence of the tenant that the scaffolding went up in her yard on or about May 10 and was removed about July 15, 2010. I find that almost 10 weeks is an excessive amount of time for the tenant in the circumstances because of the time of year, and the amount of work done in the yard by the tenant prior to and afterwards. I also accept the evidence of the tenant that the landlord did not consider the amount of time and money incurred by the tenant. I also find that the tenant has established that the tenancy has been devalued by an amount equivalent to the tenant's claim, being \$200.00.

Conclusion

For the reasons set out above, the tenant's application for an order permitting the tenant more time to apply to cancel the notice to end the tenancy is hereby allowed.

The tenant's application for an order cancelling a notice to end tenancy is hereby allowed, and the notice to end the tenancy is hereby cancelled.

The tenant's application for a monetary order is hereby allowed at \$200.00. I further order that the tenant be permitted to reduce the next month's rent by that amount.

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: November 08, 2010.

Dispute Resolution Officer