



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, LRE, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, an order for the Landlord to comply with the Act, to make repairs to the unit, site or property and set conditions on the Landlord's right of entry to the rental unit.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery by registered mail on September 2, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

This dispute was originally scheduled on October 12, 2010, but was adjourned so that the Landlord could obtain Police information and prepare for the hearing. The Tenant agreed to the adjournment.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so how much?
2. Does the unit require repairs and if so how are the repairs to be completed and by whom?
3. Has the Landlord complied with the Act?
4. Is the Tenant entitled to set conditions on the Landlord's right of entry to the rental unit?

Background and Evidence

This tenancy started in June 1, 2010 as a fixed term tenancy with an expiry date of February 28, 2010. Rent is \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00 was paid on June 1, 2010.

The Tenant said she gave the Landlord written notice on July 16, 2010 to move out September 1, 2010. The Tenant said she changed her mind and continued to rent the unit. She later gave the Landlord written notice on August 18, 2010 to move out on November 30, 2010. The Tenant confirmed that she is moving out on November 30,

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2010. The Tenant said there has been no mutual agreement to end the tenancy put in writing, but she has asked the Landlord for it on a number of occasions. She said she understands that she is responsible for the rent on the unit until February 28, 2011, unless the unit is rented out to a new tenant. She said she has been advertising the unit is for rent on line and to people she knows.

The Tenant continued to say that the rental unit requires some repairs and she has made the Landlord aware of this, but the repairs have not been completed. The Tenant said these repairs include; a toilet that is not working correctly, a slow draining bathroom sink, no electricity in the shed, a leaking fridge, a lawn mower the isn't working and a back deck that is not built to building codes. The Tenant said the Landlord did send a person over to look at the toilet, but it is still not working correctly. She said the other items have not been repaired.

The Tenant also said her quiet enjoyment of the unit has been compromised by the Landlord by sending her harassing emails and coming over without the correct notice to tenant. As a result the Tenant is claiming \$1,500.00 of damages. The Tenant said she has not spent any money on repairs or lost any money due to the tenancy, but she feels \$1,500.00 would be appropriate compensation for her loss of quiet enjoyment of the rental unit.

The Landlord said that she received written notice on July 16, 2010 from the Tenant that she was moving out September 1, 2010. She said she would let the Tenant out of the lease as she had new tenants moving in September 1, 2010. The Landlord said that she had to change those arrangements, because the Tenant changed her mind and did not move out September 1, 2010. The Landlord also said that she had to compensate the new tenants that she made the arrangements with to move in on September 1, 2010.

The Landlord continued to say that on August 27, 2010 she was told about the toilet not working correctly and she sent a person over the same day to repair it. She believed the repairs were completed. The Landlord said the shed in the back yard does not have electricity hooked up to it and the unit was rented without electricity to the shed so it is not part of the tenancy agreement. The Landlord said she is aware of the issues with the deck and she said it was her understanding the Tenant was going to put a hot tub on the deck and then repairs would be made to the deck to bring it up to building codes. The Landlord said she had not heard about the leaking fridge before the hearing, but she will have it looked at as well as the toilet and the slow draining sink in the bathroom. The Landlord said the bathroom was newly remodelled the month before the Tenant had moved in.

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The Landlord said that she has never gone to the unit without giving the Tenant adequate notice that she was coming. She said that one time she had made arrangements with the Tenant that she was showing the property, but when they arrived at the property the Tenant told her she did not want the unit shown. The Landlord showed the potential tenants the back yard, but did not go into the unit.

The Landlord said that the Tenant has tried to bully her about what she can and cannot do in regards to the tenancy and has sent her harassing emails and letters.

Analysis

Section 32 (1) says a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenant has informed the Landlord in writing that repairs are required to the toilet, the bath room sink, the back deck and verbally about the leaking refrigerator. The Landlord has agreed to repair these items therefore; I order the Landlord is to make arrangements with the Tenant to make repairs to the listed items immediately or if arrangements cannot be made with the Tenant as she is moving out November 30, 2010, the Landlord will make the repairs before new tenants occupy the unit.

Section 29 (1) says a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;

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(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As there was contradictory evidence and testimony and neither party had corroborating evidence to support their claims, I order that the Landlord must comply with the Act and adhere to s. 29 of the Act when making arrangements to enter the rental unit while it is occupied by the Tenant.

In order to be successful in the Tenant's monetary claim the Tenant must show a loss actually occurred, that it was solely caused by the Landlord, as well the loss must be substantiated by proof of losses by receipts or other methods to show how the monetary claim was calculated and the Tenant must show how she tried to mitigate her loss. The Tenant said she has not spent any money on repairing the unit and that she had not lost any money due to the tenancy. She said she did not calculate the \$1,500.00 claim from actual losses or damages. She said, she felt \$1,500.00 was an amount that would compensate her for her trouble she had in the tenancy. I find that the Tenant has not proven a loss occurred to her and she has not provide any evidence that she tried to mitigate any part of the loss that she is claiming therefore; I dismiss the Tenant's monetary claim for \$1,500.00 without leave to reapply.



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As the Tenant has not been successful in this matter I find that the Tenant is responsible for the filing fee of \$50.00 for this proceeding, which she paid August 31, 2010.

Conclusion

The Landlord is order to comply with the Act specifically sections 32 to make the repairs to the unit as indicated in the decision and s. 29 by giving the Tenant proper notice when the Landlord wants to enter the rental unit.

The Tenant's monetary claim for loss or damage of \$1,500.00 is dismissed without leave to reapply.

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*.