



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR

Introduction

This hearing commenced on October 12, 2010 and continued on November 10, 2010 at which time the claims of the parties were split. The hearing today is with respect to the items remaining that were not dealt with previously those are the tenant's applications as follows:

1. A monetary Order for compensation for damage or loss in the sum of \$5,000.00;
2. An Order that the landlord comply with the Act;
3. An Order that the landlord make emergency repairs;
4. An Order that the landlord supply services and/or facilities required by law;
5. An Order that the tenants' rent be reduced for repairs, services or facilities agreed upon but not provided; and
6. Other.

Issues(s) to be Decided

Are the tenants entitled to the Orders sought?

Background and Evidence

The tenant submits that she has lived in the rental unit uneventfully for 12 years. The tenant submits that since another manager has taken over the building has not been maintained as well as it should be. On May 26, 2010 the tenant asked that the landlord perform some repairs and maintenance. While the landlord did make some repairs the

repairs were not successful. As the matter was not resolved the tenant made application to the Residential Tenancy Branch and a hearing was held on July 16, 2010 following which the landlord was ordered as follows:

1. That the land rod return the shower head he purchased to Home Depot and exchange it for one that is not more expensive but has larger holes to accommodate the water pressure in the building and that the landlord install the new shower head;
2. that the landlord comply with the Act by providing the tenant with water and shower facilities that confirm to the housing standards required by law; and
3. that the landlord give the tenants at least 24 hours notice before turning off the water or restricting the use thereof; and
4. That the landlord maintain the fire alarm.

In this application the tenant states that her shower is still not repaired. The tenant says the tub faucet emits cold water and the shower head dribbles hot water. The tenant says she must fill a bucket in order to properly rinse herself. The tenant says since she has complained about the maintenance problems the landlord has started harassing her. The tenant says the landlord sues her "... in every Court possible..." he has tried to evict her through the Residential Tenancy Branch and he has issued a Small Claims Writ of Summons. The tenant says he issues a 10 day Notice for unpaid rent even when the rent is paid. To stop the issuance of 10 day Notices to end tenancy for unpaid rent the tenant has ensured a witness attend with her every month when she delivers her rent cheques.

The tenant's witness RC appeared at the hearing. He testified that he is also a tenant in the building and things changed since this new manager took over. RC testified that there was another tenant in the building who complained that her heat was not working properly. RC says the landlord told that woman that she could leave if she didn't like it. RC testified that after she complained about the hearing she too was accused of not paying her rent on time. RC says she was eventually evicted although she always dropped her cheque off at the appropriate time. RC says that because of what

happened to that woman, he has agreed to assist this tenant by being a witness to her dropping off her rental payments. RC testified that he has attended with this tenant every month for the past 5 or 6 months to observe as she places her rent cheque into the mailbox where all tenants are required to deliver their cheques. RC testified that the tenant puts her cheque into the mailbox either 1 or 2 days prior to the rent being due.

In one instance the manager told the tenant her cheque was lost so she was forced to pay to put a stop payment on the cheque and then issued another one. The tenant would like to recover the cost of this. The tenant also claims \$5,000.00 in compensation for loss of quiet enjoyment and harassment. The tenant says that in addition to attempting to evict her and her husband for non-payment of rent the landlord issued a Notice to End Tenancy for cause alleging that the tenant's husband assaulted the landlord when it was the landlord who assaulted her husband. The tenant says this Notice was overturned in these proceedings.

The landlord's evidence is that the shower has been repaired. In the alternative the landlord says no repairs were required. The landlord produced a receipt for the purchase of a new showerhead which he says he installed in August 2010.

Analysis

The tenant has brought this claim and bears the burden of proving the claim. The evidence shows that she has been a tenant at the rental unit for some 12 years. There has been no evidence submitted to show that there has been any problem with this tenancy during the course of the 12 years that is until the new manager arrived. Since that time there have been numerous requests for repairs, numerous Notices to End Tenancy issued and at least four hearings with the Residential Tenancy Branch in the past year.

The tenant seeks an order that the landlord make repairs while the landlord disputes the request stating that the repairs are unnecessary and/or they have already been

completed. However, I find that this decision has already been made, the repairs are necessary and the landlord is already under an Order to make the repairs. The manager has submitted a receipt for the purchase of a shower head at Home Depot but he has not been able to show that he installed the new shower head and/or that he repaired the plumbing such that the tenants' water pressure is restored and temperature is able to be properly regulated and the tenant says he has not done so.

The tenant therefore requests that a professional plumber attend to make repairs rather than the manager himself. Again, the evidence of the landlord is that the repairs have been completed and the evidence of the tenant is that they have not been completed. On this point, I prefer the evidence of the tenant. I make this preference because I find the tenant's testimony to be consistent and clear, that is that her shower has been malfunctioning since May 2010 and it has not been repaired. On the other hand the landlord's evidence is inconsistent and unclear, at one point the landlord says he made repairs, at another he says repairs are not necessary.

I find that the landlord has been given ample opportunity to make repairs and I agree that a professional plumber is necessary. As both parties are reluctant to allow the other party choose a plumber the parties agreed to allow a well-known plumbing company, * Plumbing Drainage & Heating, to attend to inspect the plumbing and make any necessary repairs.

I THEREFORE DIRECT the tenant to call * Plumbing Drainage & Heating (hereinafter referred to as “*”) forthwith and arrange a time for * to attend the rental unit to inspect the shower/bathtub plumbing and make any necessary repairs. This appointment should be arranged in coordination with one of the landlord's representatives such as JL to allow her or another landlord representative to attend the appointment with the plumber and the tenant. The tenant is to call the landlord and notify them of the date and time of the appointment. If this date and time is not suitable to the landlord the landlord must notify the tenant forthwith or the appointment will go ahead in the absence of the landlord's representative.

In the meantime, until * supplies their report stating whether repairs are required or not, the tenants are directed to deduct \$150.00 per month from their rental payments commencing January 1, 2011. If repairs are determined to be required, this sum may be deducted until the repairs are complete whether those repairs are completed at the cost of the landlord or the tenant. This deduction is allowed in addition to future deductions that may be made as set out below. Once the repairs are complete the \$150.00 deduction from the monthly rental payments must stop.

Should * determine that repairs are required, those repairs are to be completed forthwith and the landlord will bear the cost of the repairs. If the landlord refuses to pay for the repairs the tenant is authorized to pay for the repairs and deduct the cost of those repairs from future rental payments until the entire cost of the repairs is refunded to the tenants at which time the deductions must stop and the tenants are required to pay full rent.

I DIRECT THAT PL not attend or have any further contact with these tenants and that all matters relating to their tenancy be dealt with between the tenants and JL or any other person, except PL, appointed as a representative of the corporate landlord.

With respect to the tenant's claim for a monetary award for compensation for harassment or loss of quiet enjoyment I accept the testimony of the tenant and her witness. I am satisfied that the tenant has supplied her rent cheques on time for her rental payments. Despite this she has had to endure service of repeated Notices to End Tenancy none of which have been proven and/or enforced. I therefore find it is reasonable and probable that, as the tenants' state, the landlord is actually engaged in a course of harassment with the likely purpose of forcing these long-term tenants to vacate. I will therefore allow the tenant's \$1,000.00 in damages for the loss of quiet enjoyment of their home that I find this harassment has caused. This sum, in addition to any sums set out above which may be applicable, may be deducted from the tenants' rental payments until fully realized. In addition, I will allow the tenants' claim for recovery of the \$50.00 filing fee.

It may take several months of rental reductions including periods of no rent payable at all before the tenants realize recovery of all the sums awarded herein. In summary, the reductions are:

Amount	For	For How Long
\$1,000.00 in total	Harassment – loss of quiet enjoyment	Until the full sum of \$1,000.00 is realized
\$150.00 per month	Loss of use of the bathroom shower	From January 1, 2010 until the shower repairs are completed by * Plumbing
Any sum the tenant's must pay for plumbing charges not paid by the landlord	To make plumbing repairs	Until the tenants are fully reimbursed for any sums paid.
\$50.00 in total	Recovery of the filing fee	Until realized

If the parties cannot agree when one or all of these deductions should cease the landlord may make application to the Residential Tenancy Branch to obtain an Order that the deductions should stop because all sums as set out above have been reimbursed to the tenants.
