



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RR, FF, O

Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to make repairs to the unit, site or property and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on February 27, 2011. The landlord was deemed to be served the hearing documents on March 04, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to repair the unit?

Preliminary Issues

The tenant has applied for an Order for the landlord to make repairs to the unit; as the tenant has moved from the unit this section of her claim will not be considered as any Orders issued

would no longer apply and would not be enforceable. Therefore this section of the tenants claim is dismissed.

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2010 and ended on March 06, 2011. Rent for this unit was \$850.00 per month and was due on the first of each month.

The tenant seeks to recover a monetary sum of \$1,599.36 incurred because she had to move from the rental unit. The tenant has provided a receipt for this from the moving company. The tenant testifies that she was given a 10 Day Notice to End Tenancy for unpaid rent on February 24, 2011. However, she states her rent was paid on February 02, 2011 and she has provided evidence to that effect. The tenant states she decided to move from the rental unit on March 06, 2011 as this was the effective date of that Notice and she organised a moving company for that date. The tenant testifies the landlord then served her with another 10 Day Notice for unpaid rent on March 05, 2011 but did not rescind the 10 Day Notice issued in February. The tenant states she did not pay rent for March, 2011 as she had been told to move out by March 06, 2011. The tenant testifies that she did not dispute either of the Notices as there was so much going on and because the landlord had not made the necessary repairs to the unit.

The tenant testifies that she could live in her unit normally due to the repairs required to the unit and suffered from a loss of quiet enjoyment of her unit. The tenant testifies when she rented the unit the landlord told her all repairs would be made within a couple of weeks. She states she gave access to the landlords' repairman whenever he needed to come into her unit but she had concerns about his qualification as an electrician to make some of the repairs. The tenant states her electrical panel was not repaired and was unsightly. The repairman did cover it with a box in December, 2010 but the other required repairs to the system were not made. The tenant testifies she only had one working electrical socket in her kitchen and one socket did not have a cover on it. When the repair man came to look at these he made large holes in the walls which went through to the upstairs tenants' front entrance way and the tenant explains she lost privacy due to this issue. The tenant testifies that she asked the landlord to engage a bondable, certified electrician to make the repairs to her unit but she refused to do so.

The tenant testifies that her kitchen would flood whenever it rained. There was a leak from around the window which the repairman said he had fixed but a week later it leaked again. The tenant testifies she asked the landlord to bring in a professional to have this work done but again the landlord refused to do that and on January 15, 2011 the window leaked again and the tenant lost two hours of work as she had to stay home to clean up the water. On January 17, 2011 the repairman was supposed to come to look at the window at 7.30 am but did not arrive until 11.30 am. The tenant testifies the landlord asked her to keep an eye on the window and to let them know if it leaked again. On this date the tenant states it did not leak but she found a kitchen cupboard hanging off the wall. The tenant states it took the landlord a month to fix the window.

The tenant testifies that there were broken door handles on two bedroom doors. The latches were broken and she became locked into one of the bedrooms for three hours. After this she put masking tape over the mechanisms to prevent them closing which was still there when she moved out. She states she notified the landlord of this and brought new locks herself but the landlord never made the repairs.

The tenant testifies that there was a problem with the sewage system. She says she had to plunge the toilet everyday and sewage would back up into her bathtub. When the tenants living upstairs used their toilet or bathtub it would back up into her unit and would flood if no one was at home. The tenant has provided two witness statements detailing the problems with the toilet and bathtub backing up and flooding. The tenant testifies that the repairman did replace the toilet but this did not rectify the problem as sewage still backed up into her bathroom.

The tenant states she would always allow the repairman access to her suite But on one occasion he would arrived and started asking her questions about the affairs of the upstairs tenant. On January 14, 2011 the repairman brought another person into her unit without permission and left this person alone in her unit for over an hour and the repairman was just not making the required repairs. The tenant states that she did not want the repairman in her unit alone but did allow him into her suite to do a repair when he was able to be supervised by the tenants living upstairs.

The tenant seeks a monetary Order for money owed or compensation for damage or loss:

Moving costs - \$1,599.36

Filing fee - \$50.00

Registered mail costs and photocopying costs - \$108.75

Ink cartridges - \$33.56

Loss of wages @\$22.70 per hour for three days plus two additional hours - \$158.90

Loss of peace and quiet enjoyment - \$3,049.42

The landlord' agent testifies that the 10 Day Notice issued in February was issued because the tenant had not paid rent on February 01, 2011. They agree that the tenant did pay rent on February 02, 2011 but made a mistake when they checked their records as they only checked if the rent had been paid on the first of the month. The landlords' agent testifies that the tenant did not dispute the first 10 Day Notice and the second Notice was issued because she failed to pay rent for March, 2011.

The landlords' agent testifies that the tenant took photographs of the electrical box when it needed repair. He states the box has been repaired but he does not know when. The landlords agent testifies that they could not repair the sockets in the kitchen as the tenant refused access to the repairman and after she moved out they found she had a five sockets, all the appliances worked and the other sockets and lights all worked.

The landlords' agent testifies that the tenant refused access to her unit for their repairmen to make necessary repairs to the window in the kitchen. They state the window was repaired within two weeks. They state the tenant would put paper towels on the window ledge which then caused the water to leak to the floor.

The landlords' agent testifies that they did not change the tenants' bedroom doors but they did change her locking mechanisms but could not identify when this was done.

The landlords' agent testifies that the landlords' repairman did change the toilet and since the tenant has moved out they have not experienced any problems or sewage smells. He also states the tenant has provided no photographic evidence of this problem and did not notify the landlord of a continuing problem after the toilet was replaced.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for moving costs it is my decision that the tenant did not dispute the 10 Day Notice she received in February, 2011 even though she would have had grounds to do so. The tenant did however decide to move from the rental unit on the effective date of that Notice and therefore as it was her choice to move at that time she is not entitled to recover any moving costs incurred and this section of her claim is dismissed.

With regard to the tenants claim for compensation for a loss of quiet enjoyment of her rental unit; the landlord argues that the repairs to the tenants unit could not be completed because the tenant refused to allow the repairman to have access to her unit and argues that in some cases repairs were either done or not required. In this matter the tenant has shown that she did allow the repairman to access her unit and still the repairs took many weeks and months to complete with some remaining outstanding during the length of her tenancy. I find the landlords verbal testimony to be vague on some of the issues concerning repairs and no information has been provided as when repairs they claim were completed were done. As a result I prefer the tenants testimony in this matter and I find the tenant has suffered as a result of an intrusion on her right to privacy, a lack of freedom from unreasonable disturbance and the exclusive possession of the rental unit as the landlord did not make the necessary repairs to her unit which allowed the tenants upstairs to see directly into her unit if they were in their entrance hall or doing laundry, and the excessive time taken to make repairs to the tenants unit and in their appointed repairman leaving an unknown person alone in the tenants unit (which the landlords did not dispute) for a period of over one hour pursuant to s. 28 of the *Act*.

I do find however that the amount the tenant seeks to recover in compensation for the lack of quiet enjoyment of her rental unit to be excessive and therefore I reduce her claim to the sum of \$150.00 per month for the five months of her tenancy. Consequently, the tenant is entitled to compensation of **\$750.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim to recover costs for sending documents by registered mail, for photocopying costs for documents and for ink cartridges, I find as it is a tenants choice to use

this form of service, to photocopy documents or to print documents off if she decides to use them in evidence she is not entitled to recover these costs from the landlord and these sections of the tenants claim are dismissed.

With regards to the tenants claim for a loss of income for three days and two hours; the tenant has only provided verbal testimony concerning her wages and has provided no evidence to support how much she earns or how many hours she lost from work having to deal with repair issues. Consequently, as the burden of proof in this matter falls to the tenant to establish her claim I find this burden has not been met in this matter and this section of the tenants claim is dismissed.

As the tenant has been partially successful with her claim I find she is entitled to recover her filing fee from the landlord of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant to the sum of **\$800.00**

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$800.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants claim 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*.

Dated: March 31, 2011.

Residential Tenancy Branch