

DECISION

Dispute Codes:

DRI, LRE, MNDC, RP, RR, FF, O

Introduction

This is the Tenant's application to dispute an additional rent increase; for an Order that the Landlord make repairs to the rental unit; for compensation for damage or loss under the Act, Regulation or tenancy agreement; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for a reduction in rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenant served the Landlord with the Notice of Hearing documents, in accordance with the provisions of Section 89(1)(c) of the Act, by mailing the documents by registered mail on February 15, 2011. The Tenant provided the Landlord with a copy of his documentary evidence in the same manner, mailing the documents on February 16, 2011. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to the Orders and compensation sought under Sections 32, 65(1), 67, 70 and 72(1) of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

This is a long term tenancy, which started approximately 20 years ago. The Landlord inherited the tenancy approximately 15 years ago from the previous landlord. There was a written tenancy agreement between the Tenant and his previous landlord, but no written tenancy agreement was entered into with this Landlord.

In March of 2010, the Landlord increased the Tenant's rent from \$841.00 per month to \$915.00 per month.

Effective March 1, 2011, rent is increased to \$936.00 per month. The Tenant is not disputing this rent increase.

The Tenant gave the following testimony and documentary evidence:

The Tenant agreed to the March 1, 2010, rent increase and had an understanding with the Landlord that there would be renovations made in the rental unit, including the installation of new kitchen cupboards. There was a considerable delay in installing the kitchen cupboards but they were eventually installed, although the Tenant did not provide a date for completion either in his testimony or in his considerable documentary evidence. The Tenant provided documentary evidence that the project was not started until sometime after July 31, 2010.

After the cupboards were installed, the Landlord replaced the kitchen floor with laminate flooring. On December 30, 2010, the Tenant sent an e-mail to the Landlord requesting repair to a closet door that was not closing properly. On January 9, 2011, the Tenant sent an e-mail to the Landlord voicing some concerns about deficiencies, including "missed floor area under counter between stove and fridge"; "wood glue on baseboard needs to be painted"; and "kitchen light fixture". On January 18, 2011, the Tenant phoned the Landlord, who said that she was not able to discuss the matter at that time.

On January 19, 2011, the Landlord replied to the Tenant's e-mails, apologizing for not replying earlier and stating, "Know that it will get done".

On January 31, 2011, the Landlord e-mailed the Tenant again, indicating that she would have a look at the floor and the closet door "when I am over". The Landlord also indicated that the Tenant was "more then welcome to leave if I am such a bad landlady and the place is falling apart" (reproduced as written). The Landlord concluded that she is "free on Thursday to do the work". The Tenant replied to the Landlord approximately half an hour later, indicating that Thursday would work for him. He followed up with an email on February 1, 2011, asking the Landlord when she expected to be at the rental unit and expanding on the deficiencies in detail. The Tenant indicated in his email that he is concerned that the floor was not laid properly as it is not laying flat and does not appear to be securely attached to the floor. In this email, the Tenant also asked the Landlord to remove, clean, and replace the batteries in his smoke alarm. The Landlord responded that she would be at the rental unit from 9:00 a.m. until noon on February 3, 2011.

On February 2, 2011, the Landlord emailed the Tenant again, saying that she will also be bringing a realtor with her. The Tenant replied, "that will be fine". The Tenant followed up with 2 more e-mails regarding the placement of the smoke alarm.

On February 3, 2011, the Tenant wrote a nine page email to the Landlord "to explain my frustrations" and also send a copy of the document via registered mail to the Landlord.

The Landlord came to the rental unit on February 3, 2011, but left without finishing the repairs or repairing the closet door. The Landlord returned on February 4, 2011, and took the smoke alarm with her. The Landlord has not returned the smoke alarm to date.

At some point during the kitchen renovations, the Landlord used a towel belonging to the Tenant, without the Tenant's permission, to clean up a mess and then threw it away. When the Tenant objected, the Landlord provided the Tenant with one of her own

towels. The Landlord also used a masonite drawing board belonging to the Tenant, without his permission, and ruined it. It has not been replaced by the Landlord. The Landlord also used the Tenant's good kitchen knife, without permission, to open a box of screws.

The Tenant seeks a monetary award, calculated as follows:

Description	Amount
Rent reduction for January, 2011 for loss of use and peaceful enjoyment	\$503.25
Rent reduction for February, 2011 for loss of use and peaceful enjoyment	\$484.95
Rent reduction for March, 2011 for loss of use and peaceful enjoyment	\$468.00
Compensation for loss of sentimental value and cost to replace bath towel	\$56.20
Cost to replace masonite board	\$35.68
TOTAL MONETARY CLAIM	\$1,548.08

The Landlord gave the following testimony:

The Landlord has not returned the smoke alarm. She was upset by the Tenant's nine page letter. The Landlord found the Tenant's e-mails and phone calls to be a form of harassment.

The laminate flooring referred to by the Tenant is only 30 square feet. The Tenant started putting unreasonable qualifications on who he would accept to fix the floor (i.e. must be a professional, must be approved by the Tenant first).

The Landlord agreed that she had used the Tenant's towel, masonite board and kitchen knife.

Analysis

Regarding the smoke detector

Section 32 of the Act outlines a landlord's and a tenant's obligations with respect to repair and maintenance of the rental unit. Part 1 of the Residential Tenancy Policy

Guidelines provides that it is the Landlord's responsibility to repair and maintain smoke detector, including changing the batteries annually. During the course of the Hearing, I ordered the Landlord to provide the Tenant with a working smoke alarm immediately, as this is a safety issue. The Tenant consented to the Landlord attending at the rental unit at noon in order to install the smoke alarm.

Regarding the Tenant's application to dispute the March, 2010, rent increase

The Tenant testified that he knew the rent increase imposed in March, 2010, was more than the amount allowed under the Regulations, but that he accepted the rent increase. The Tenant now seeks to dispute the rent increase because he believes that he and the Landlord had an understanding that there would be renovations done to the rental unit which justified the increase. The Tenant has also applied for a rent reduction based on the fact that the renovations were delayed and that there are deficiencies which have not been addressed.

Based on the Tenant's own testimony, I find that the Tenant accepted the rent increase, and in fact has been paying it for almost a year. The Tenant's application to dispute the rent increase is therefore dismissed.

The Landlord is ordered to provide any future notices of rent increase in a manner that complies with the provisions of Part 3 of the Act and Part 4 of the *Residential Tenancy Regulation*.

Regarding the Tenant's application to suspend or set conditions on the Landlord's right to enter the rental unit

The Tenant did not provide sufficient evidence that the Landlord's right to enter the rental unit should be restricted or suspended. The Landlord is ordered to comply with Section 29 of the Act with respect to exercising her right to access. The Tenant is

advised that he is not required, nor is he entitled, to be present in the rental unit when the Landlord exercises her right to be there.

This portion of the Tenant's application is dismissed.

Regarding the Tenant's application for a reduction in rent

Section 65(1)(f) of the Act states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Section 32(1) of the Act states:

32 (1) 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.

Neither party provided photographic evidence to indicate the state of repair of the kitchen floor, baseboards or closet. However, the Landlord acknowledged that there were deficiencies and that she has not attended to those deficiencies in a timely manner, or at all. Therefore, I find that the Landlord has not complied with Section 32 of the Act. The Tenant has applied for a 50% rent reduction, which I find to be excessive. I find that the Tenant is entitled to rent abatement in the amount of \$45.75 (5% of monthly rent) for each of the months of January and February and \$46.80 for March, 2011, and a further rent reduction in the amount of \$46.80 per month until the Landlord

attends to repairs to the kitchen floor, baseboards and the closet. This rent reduction will remain in effect until the Landlord files an Application for a determination by a Dispute Resolution Officer that the repairs are completed, or the Tenant agrees **in writing** that the repairs are completed.

Regarding the Tenant's application for compensation for loss of peaceful enjoyment

Section 67 of the Act states:

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Although the Landlord has not attended to the repairs required, based on the testimony of both parties and the documentary evidence, I find that the Tenant was partially responsible for the delay. The Landlord did not exercise her rights under Section 29 of the Act. However, I find that the Tenant did not do whatever was reasonable to minimize the damage or loss pursuant to the provisions of Section 7(2) of the Act , by obstructing the Landlord's access to the rental unit and by insisting that the Landlord hire professionals to fix the laminate floor. The Tenant has already been compensated by way of rent reduction. This portion of the Tenant's application is dismissed.

Regarding the Tenant's application with respect to the towel and masonite board:

The Landlord did not dispute that she had ruined the Tenant's towel and masonite board. The Tenant provided evidence that the cost of replacing those items is \$11.20 for the towel and \$15.68 for the board. The Tenant has established a total monetary award in the amount of \$26.88 for these two items.

Recovery of the filing fee:

The Tenant has been partially successful in his application and is entitled to recover the cost of the filing fee from the Landlord.

Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenant may deduct his total monetary award from future rent due to the Landlord. For clarification purposes, April rent will be \$720.82 (\$936.00 – \$138.30 - \$26.88 - \$50.00). Monthly rent thereafter will be \$889.20 until the Landlord files an Application for a determination that the repairs are completed, or the Tenant agrees **in writing** that the repairs are completed.

Conclusion

The Landlord is ordered to provide the Tenant with a working smoke alarm by noon, February 24, 2011.

The Tenant's application to dispute the rent increase imposed in March, 2010, is dismissed. The Landlord is ordered to provide any future notices of rent increase in a manner that complies with the provisions of Part 3 of the Act and Part 4 of the *Residential Tenancy Regulation*.

The Tenant's application to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed. The Landlord must provide the Tenant with written notice in accordance with the provisions of Section 29 of the Act.

The Tenant is entitled to rent abatement for the months of January, February and March, 2011, in the total amount of \$138.30. Future rent will be reduced by \$46.80 per month until the Landlord attends to repairs to the kitchen floor, baseboards and the closet. This reduction remains in effect until the Landlord files an Application for a determination that the repairs are completed, or the Tenant agrees **in writing** that the repairs are completed.

The Tenant's application for compensation for loss of use and peaceful enjoyment is dismissed.

The Tenant has established a monetary award in the amount of \$26.88 for the cost of replacing the towel and the masonite board.

The Tenant has been partially successful in his application and is entitled to recovery of the filing fee from the Landlord, in the amount of \$50.00.

Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenant may deduct his total monetary award from future rent due to the Landlord. For clarification purposes, April rent will be \$720.82. Monthly rent thereafter will be \$889.20 until the Landlord files an Application for a determination that the repairs are completed, or the Tenant agrees **in writing** that the repairs are completed.

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 02, 2011.
