



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNR, MNDC, OLC, RP, RR, SS, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute resolution seeking to cancel a notice to end tenancy; a monetary order; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order to have the landlord make repairs; and an order to reduce rent for repairs.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and his agent/interpreter.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a notice to end tenancy; to a monetary order for the cost of emergency repairs; for damage or loss; for an order to have the landlord make repairs; to reduce rent because of repairs not made and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 49, 52, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in September 2007 as a month to month tenancy for a current monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid at the start of the tenancy.

The parties acknowledge that in 2009 there had been a rat and mouse problem in the rental unit for which the landlord hired an exterminator and compensated the tenant with a month's rent (\$850.00) to cover damages and losses suffered by the tenant.

In the fall of 2010, the tenant requested the landlord make some repairs to the rental unit to seal up entry points to prevent mice from entry, and in early winter a tree fell on the roof of the adjoining carport. Shortly after this, the tenant states a mouse was found inside the rental unit.

As a result, the tenant states she discarded several packages of dry good groceries and found damage to her mattress and couch and several other personal items including pillows, bedding curtain, stuffed animal. The tenant testified that in response when the

landlord failed to block all access points despite her requests to do so, she took it upon herself to fix all interior access points.

The tenant also testified that because of the infestation she had to do an extraordinary amount of laundry and as a result her hydro costs increased over this period. The tenant did not provide any hydro bills showing increased costs. The tenant provided receipts totalling \$492.06 for construction supplies to block access points; food purchases; and the purchase of totes.

The tenant testified that all but the following repairs have been completed: adjustments to the post in the carport; cracks on the exterior of the house that could provide rodent access; and sealing of the eave troughs.

In response to the tenant's requests for repairs and compensation, the landlord provided the tenant with a type written document dated January 31, 2011 stating it is a one month notice to end the tenancy requiring the tenant vacate the rental unit by February 28, 2011.

The landlord testified that the notice was issued for the tenant to vacate the unit so that they could go in and make all necessary repairs to the house but that once completed the tenant would be given priority to return to the rental unit.

Analysis

Section 49 of the *Act* states a landlord may end a tenancy if the landlord has all the necessary permits to renovate or repair the rental unit in a manner that requires the rental unit to be vacant by provide a 2 month notice to end the tenancy in accordance with Section 52.

Section 52 states that when a landlord issues a notice to end tenancy, in order to be effective it must be in writing and be signed and dated by the landlord; give the rental unit address; state the effective date of the notice; state the grounds for ending the tenancy and be in the *approved form*.

As the landlord failed to provide the tenant with a notice to end tenancy in the approved form, I find the notice issued by the landlord on January 31, 2011 to be ineffective.

When a party makes a claim for loss or damages the party making the claim must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; *and*
4. Steps were taken to mitigate any loss or damage.

I accept the tenant suffered a loss as the landlord failed to comply with his obligations to make repairs as outlined under Section 32 that states a landlord must maintain a rental unit in state that makes it suitable for occupation by a tenant.

However, in relation to any damages to dry good food packaging, from the photographic evidence submitted, I see no damaged packaging or holes where mice may have entered and as such, I am not convinced that there was any loss of food.

Even if I were to accept the tenant lost food that had been left in its original packaging, I find the tenant took no steps to mitigate any loss or damage. For example, after experiencing a previous rodent problem for which the tenant was compensated, she continued to store her dry goods in their original packaging.

As the tenant continued to complain to the landlord that repairs were required to stop rodents from accessing the interior of the house, I find she was aware that the potential for an infestation remained and she should have taken steps, such as using glass or plastic containers to store her dry goods.

From the photographic evidence, I accept there is damage to a foam mattress and to a regular mattress but it is not clear from any of the evidence what caused that damage. In addition, the tenant indicated there was damage to a couch and other smaller belongings but has provided no evidence of these damages.

While the tenant provided testimony that her hydro costs had increased as a result of additional cleaning she has provided no evidence to establish the value of this increase.

Based on the above, I find the tenant is entitled to compensation for materials and supplies related to the repairs required to "rodent proof" the interior of the rental unit and for the time required to make these repairs. I also find the tenant is entitled to compensation resulting from the landlord's inaction in making the repairs required in the first place, after the initial infestation of May 2009.

I order the landlord to have the home inspected by a rodent exterminator to identify all possible access points both inside and outside of the rental unit and based on the findings of the exterminator to make the suitable repairs. I order the landlord also make repairs to the carport to ensure the structure is safe and in accordance with local building standards.

I further order that the landlord will reduce the rent by \$50.00 per month until such time as the landlord obtains an order from a Dispute Resolution Officer confirming that the repairs are complete and the rent may be reinstated to \$850.00.

Conclusion

As a result of my finding above that the notice issued to the tenant to end the tenancy is ineffective; I find the tenancy remains in full force and effect and the notice issued by the landlord is cancelled.

I find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$900.00** comprised of \$850.00 compensation for supplies; labour; and inconvenience and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: April 15, 2011.

Residential Tenancy Branch