



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP OLC

Preliminary Issues

The Tenant testified that when she had not received evidence from the Landlord by Friday June 17, 2011 she called her advocate. Because her advocate does not work every day she was not able to speak with her until Tuesday to confirm the Advocate had been sent copies of the Landlord's evidence. She did not meet with the Advocate to review the Landlord's evidence until this morning. The Advocate confirmed receipt of the Landlord's evidence via fax on June 16, 2011.

The Landlord testified the Tenant was served copies of their evidence on June 16, 2011 at 11:15 a.m. when the envelope was taped to the Tenant's door.

I asked the Tenant why she did not contact the Landlord on Friday June 17, 2011 when she could not get in touch with her advocate to confirm if evidence had been sent. She advised that she does not speak with the Landlord.

Based on the aforementioned I find the evidence was served to the Tenant and her Advocate in a manner that complies with the Act. That being said I gave the Tenant and Advocate leave to request an adjournment to allow time for them to review the evidence in more depth together, if they required. They advised that they did not want to request an adjournment and stated they were prepared to proceed with today's hearing.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to have the Landlord make repairs to the unit, site or property and to have the Landlord comply with the Act, regulation or tenancy agreement.

The parties appeared at the teleconference hearing, the Landlord confirmed receipt of the hearing documents and the Tenant's evidence, all parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant met the burden of proof to establish that repairs are required to the rental unit, site or property?
2. If so, has the Landlord breached the Act, regulation or tenancy agreement?

Background and Evidence

I heard undisputed testimony that the Tenant has occupied the rental unit since August 1, 2004. Rent is payable on the first of each month and the current subsidized rent amount is \$345.00 per month which includes the cost of cable. The Tenant paid \$296.50 on August 1, 2004 as the security deposit which was based on market rent.

The Tenant and Advocate confirmed the Tenant is seeking Orders to have her bathroom fan repaired so that it works properly and the seal repaired on the wooden base around her patio door.

The Tenant testified that when she first occupied her rental unit the bathroom fan worked fine and it would clear the steam out of her bathroom after bathing. Then in December 2010 she noticed that steam was not being cleared from the bathroom. She reported this to the building manager and before it was repaired the motor in the fan completely stopped working. The Landlord did replace the fan however it does not remove the steam and there is actual water dripping down the bathroom walls after she bathes.

A discussion followed whereby the Advocate and Tenant explained what they were taking about relating to the "sill" under the patio door. The Advocate said she was looking at a photo of the patio door area that is in question and that she could see there was a space where the sealant is cracked leaving a gap between the patio door and the wooden base. The photo was taken looking down towards the floor and she can see through the space to the floor. The area in question involves a piece of wooden material that runs against the wall on the inside of the rental unit that is between the metal footplate or bottom rail of the patio door and the baseboard electric heater.

The Landlord testified and referred to her evidence which included reports on the motor size requirements for bathroom fans. She advised the fan motor was replaced for this Tenant and not the entire fan. She stated the replacement motor is a smaller sized motor than the original motor was however it still meets the construction standards and industry standards as supported by her evidence. The contractor who installed the new

motor did a paper test at the time of installation and reported that the new motor was working fine.

With respect to the Tenant's complaints about the patio door area the Landlord advised that her evidence supports the contractor checked the area in question and confirmed there was no air leakage. She confirmed this patio door was replaced during a building envelope retro fit and the wooden board the Tenant is referring to is a trim around the door that is on the interior of the unit and is placed there for cosmetic purposes only. The paint may be chipping away and the caulking that was used to make the trim look aesthetically appealing may be wearing away but this does not affect the air movement around the door.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included among other things, copies of several written communications between the parties, e-mail statement from the contractor who attended the rental unit to replace the fan motor and inspect the patio door sill area, and construction standards set by the Province.

I find that in order to justify the issuance of Orders to a Landlord under sections 32 and/or 62 the Act the Applicant Tenant would be required to prove that the other party did not comply with the *Act*, regulation or tenancy agreement.

The evidence supports the Tenant's bathroom fan motor quit working and the Landlord had the motor replaced with a motor that exceeds the size requirements listed in the Provincial construction standards.

There is insufficient evidence to support the Tenant's claims that the current bathroom fan is inadequate.

There is evidence before me that the Tenant's request for repair to wooden trim or base underneath her patio door was inspected by the Landlord's contractor. I accept that the evidence supports there is no air movement going through this area and that the concerns are cosmetic in nature. While the appearance may not be as pleasing to look at, there is insufficient evidence to support repairs are required at this time.

As per the aforementioned I find there is insufficient evidence to prove the Landlord has breached the *Residential Tenancy Act*, regulation or tenancy agreement and therefore I dismiss her application in its entirety.

Conclusion

I HEREBY DISMISS the Tenant's application, 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: June 23, 2011.

Residential Tenancy Branch