



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, ERP, RP

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. A monetary order for compensation for damage or loss in the amount of \$5,000.00;
2. An Order that the landlord comply with the Act;
3. An Order that the landlord make emergency repairs for health or safety reasons; and
4. An Order that the landlord make repairs.

This hearing was originally scheduled for August 18, 2011. The landlord requested an adjournment. The landlord testified that he had not had time to review the evidence in this matter or to seek legal advice and this was particularly necessary due to the sum being sought.

The landlord's request for an adjournment was granted and the hearing was rescheduled for September 28, 2011.

Both parties attended and gave evidence under oath or affirmation.

Issue(s) to be Decided

Is the tenant entitled to any of the Orders sought?

Background and Evidence

The tenant testified that this tenancy began in 2005. Unlike many of the other tenants in the rental building the tenant is not on methadone. The tenant says he is making this claim because he is not getting his mail, he has no key to come and go and he is not allowed to have guests.

The tenant says that all of his mail is delivered to the pub located in the street level portion of the building which the tenant says is No. 37 – West Hastings Street while the tenant lives at No. 35 West Hastings Street. The tenant says the bartender in the pub receives the mail and refuses to give it to the tenant. The tenant says he has lost T-5 slips and his phone was cut off because he never received his phone bill in order to pay it. The tenant says that prior to 2005 the landlord delivered the mail upstairs.

The tenant also says that the landlord took his front building door key away and now he has to push a buzzer and wait for a desk clerk to respond in order to get into the building. The tenant says guests are not allowed.

The tenant says the landlord is an intimidating person who calls him names and makes “off the wall remarks”. The tenant says he cannot remember the things the landlord says but recalls the landlord once tried to raise the rent overnight and the tenant filed an Application to Dispute that claim but the landlord never showed up to the hearing.

The tenant says a guy came to him a week ago and asked him to sign papers not to go ahead with this hearing and he refused. The tenant says that on the morning of the hearing the landlord called him but the tenant refused to speak to him and then a clerk came into this room to check for leaks and put a hole in his wall. The tenant says the guy told him he was looking for a drain and this is not true because, the tenant says, there is no drain.

The tenant says he gets cockroaches from other rooms but he has no rats, mice or bed bugs. The tenant says his whole room needs painting and he has no light bulbs and no ladder. The tenant says there used to be a washer and dryer in the building but there is no longer a washer and dryer. The tenant says he has no kitchen even though all rooms were supposed to have a fridge and stove. The tenant says there has been a problem with the heat as a result of which he has problems with his health. The tenant says there was a fire in the building.

The landlord says there are no holes in the walls to his knowledge but the building is currently undergoing repairs and if there are holes in the walls they will be repaired. The landlord says the tenant is a heavy smoker who cooks in his room and his walls are stained from nicotine and cooking. The landlord says light bulbs are supplied if tenants ask for them. The landlord says the only fire the building nearly had was when the tenant came home drunk from the pub downstairs and decided to cook at 1 or 2 a.m. The tenant fell asleep and his room was full of smoke.

The landlord says when bar staff receive mail they will give mail to those who can identify themselves. Further the landlord says the tenant lives at No. 35 West Hastings while the pub address is No. 37 and if the tenant has given his correspondents the wrong address that is not something the landlord can do anything about.

With respect to the keys the landlord says there used to be a well known drug and extortion business operating out of the hotel. Organized crime operated in and around the building and there were guns, knives and bullets. The hotel was later cleaned up and one of the safety features is a buzz-in entry monitored 24/7 by staff. The landlord says the building is now safer, quieter and cleaner than it used to be. The landlord says that the tenant is allowed to bring in guests.

The landlord says there have never been laundry facilities in the building to his knowledge nor have there ever been kitchens in the rooms. Rooms are often equipped with fridges and the tenants supply their own hotplates.

The landlord says that there is routine pest control in the building.

The landlord says the tenant's health problems are due to his smoking and drinking and not to do with heating problems in the building.

GW gave evidence that his organization has been working on some of the rooms and are taking care of all deficiencies in the buildings. GW states that they will fix the tenant's room as well.

Analysis and Findings

The testimony of the tenant and the landlord is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here. Overall I find that the tenant has failed to provide sufficient evidence to support his claim for a monetary award. Because the evidence shows that repairs are taking place and the testimony of the witness

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: September 29, 2011.

Residential Tenancy Branch