



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, EPR, RP, RR

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss, to order the landlord to comply with the Act, order the landlord to make emergency repairs, order the landlord to make repairs and allow a tenant to reduce rent for repairs. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began July 1, 2010 with monthly rent of \$920.00 and the tenant paid a security deposit of \$460.00.

The tenant testified that in July 2011 the carpet in her rental unit had been badly stained when the hot water tank was replaced by a plumbing company and that it took 54 days for the landlord to have the carpet professionally cleaned. The tenant stated that the carpet cleaning company had repeatedly cancelled their appointments to come clean the carpet and left one day as they had claimed the hose on their equipment was damaged.

The landlord testified that the tenant made it very difficult for the carpet cleaning company to come in to the unit and clean the stained carpet. Evidence submitted by the landlord shows that the tenant called the carpet cleaning company demanding that they contact her in writing only. The landlord stated that the carpet cleaning company left numerous notices with multiple dates on the tenant's door and the tenant would not respond back to them or him with an answer.

The tenant stated that the glued down flooring in the bathroom and kitchen had started to bubble up in waves and that it was not properly repaired by the landlord. The tenant said the flooring at the entry to the bathroom and in front of the kitchen sink are the worst areas and that she would like to have the flooring fixed. The tenant also mention

that she recently had a problem with flies in the rental unit and wondered if the flooring was somehow attracting the flies.

The landlord stated that he inspected and repaired the flooring on September 1, 2011 after being made aware of the concern by the tenant. The landlord stated that as the flooring is glued directly to a concrete floor with no sub-floor, there is no way to prevent the bubbles or waves and that he had completed repairs as directed by home repair specialists. The landlord stated that this flooring was just over 1 year old, new at the start of the tenancy and that this was what happened to this type of flooring.

The landlord went on to comment that the only reason why the tenant had filed this claim was to reduce the amount of the \$2000.00 of unpaid rent that she owes the landlord. The tenant acknowledged that she had gotten behind in her rent and that the landlord had reduced her rent from \$920.00 to \$750.00 so that she could get caught up.

The tenant in this application is seeking \$1050.00 compensation.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for damage or loss, an order for the landlord to complete emergency repairs or to allow the tenant to reduce rent for repairs.

The landlord acted in timely manner to have the carpets cleaned however the tenant was instrumental in creating repeated delays to allow access for the carpet cleaning company to come in and clean the carpets. These repeated delays in scheduling were out of the landlord's control therefore it is not reasonable for the landlord to be held responsible for these delays.

Repair of the kitchen and bathroom floors does not constitute an emergency repair therefore this portion of the tenant's application is dismissed. The landlord has responded in a timely fashion to the tenant's requests for repairs and the condition of the floor does not preclude the tenant from being able to use the rental unit therefore the tenant's application for a rent reduction and compensation for damage or loss are dismissed.

Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep

the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

The landlord did attend the rental unit on September 1, 2011 to complete repairs on the kitchen and bathroom flooring however the condition of flooring remains an issue. I am not satisfied that there is no alternate way to repair or re-glue the floor, that it simply cannot be repaired and that 'bubbles/waves' are a natural occurrence. I do not believe that flies in the tenant's unit are in any way associated with the flooring in the kitchen or bathroom and this is a matter the tenant will need to resolve independently..

I hereby allow the tenant's claim for an order for the landlord to complete repairs.

I hereby Order that the landlord repair or replace the kitchen and bathroom flooring to ensure that all 'bubbles or waves' are removed and the floor does not become a tripping hazard. This repair/replacement is to be completed no later than November 30, 2011.

If the landlord does not complete the repairs by November 30, 2011 the tenant will then be at liberty to make an application for a rent reduction for repairs.

Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain** speaks to:

(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.

Conclusion

The landlord is hereby Ordered to repair or replace the kitchen and bathroom flooring no later than November 30, 2011.

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 19, 2011.

Residential Tenancy Branch