



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, LRE, RR, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order; an order to have the landlord comply with the *Residential Tenancy Act* (Act); to have the landlord complete repairs and emergency repairs; to suspend or set conditions on the landlords' right to enter the rental unit; to reduce rent for repairs agreed upon but not provided.

The hearing was conducted via teleconference and was attended by the tenant, her witness and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord complete repairs and emergency repairs; to suspend or set conditions on the landlord's right to enter the unit; to reduce rent for repairs not provided; to a monetary order for compensation, pursuant to Sections 29, 32, 33, 67, and 72 of the Act.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the landlord on June 1, 2011 but unsigned by either tenant for a month to month tenancy for the monthly rent of \$850.00 due on the 1st of each month. The tenancy agreement indicated several items that are included in the rent but does not mention any inclusion of a storage shed.

The parties agree the tenants did not move into the rental unit until June 11, 2011 but that they had access to the rental unit prior to June 1, 2011. The tenant contends the landlord had verbally agreed to an extensive list of renovations and repairs and that he has failed to make these repairs.

The landlord states that there was no actual agreement but that the tenant sent him a letter dated July 8, 2011 with a list of items she wanted repaired or renovated with a deadline for completion of some items of July 30, 2011 and some by August 31, 2011. The tenant submitted her Application for Dispute Resolution on August 9, 2011.

The tenant states that the landlord has not communicated with her for several months now and she cannot understand why. The landlord testified that he had spoken with the

tenant's advocate who suggested that he not communicate with the tenant at all until the resolution to these issues was obtained.

The landlord has no objections to completing the majority of repairs on the tenant's list, however, he testified that he had arranged on two occasions to attend the rental unit with the tenant and that both times she would not allow him in to make the repairs/renovations. The tenant did not dispute this testimony.

The landlord did testify that there were some repairs or renovations that he would not provide as he felt they were beyond the scope of repairs he is required to make and do not impact the investment he has in the property or the tenancy. Because the landlord was advised by the tenant's advocate not to communicate with the tenant, he has not informed the tenant of any items he is not willing to repair or renovate.

In addition to the repairs and renovations issues the tenant asserts the landlord breached the *Act* in the following manners:

1. Verbally evicting the tenant;
2. Expressing anger at the tenant for contacting the Residential Tenancy Branch (RTB);
3. Insisting on verbal notice to enter the rental unit and refusing to give written notice;
4. Failing to maintain the rental unit according to health, safety and housing standards required by law;
5. Has not made repairs requested within a reasonable time;
6. Not investigating complaints from the tenant regarding the neighbouring tenants;
7. Failing to provide a tenancy agreement within 21 days of actual move in;
8. Failing to complete a condition inspection and subsequent report;
9. Failing to return a security deposit because the landlord failed to complete a move in inspection;
10. Failing to make it clear where to pay the rent;
11. Forcing the tenant to pay rent late because he did not come to the rental unit to pick it up;
12. Failing to provide an emergency contact number;
13. Giving neighbours misinformation and the neighbours subsequent anger at the tenant;
14. Failing to advise the tenant of people working for the landlord making repairs and the tenant seeks to have an order to require the landlord to bring in an inspector;
15. Access to the storage shed; and
16. Adding stress to the tenant's life.

The landlord testified that he was not angry with the tenant but rather frustrated that she did not attempt to resolve matters with him before approaching RTB and that he did not verbally evict her but suggested that if she was not happy in the rental unit that she could end the tenancy.

The landlord testified that originally the tenant expressed that he could drop by anytime to complete work but he did try to give her advance warning by calling her and as noted above on two occasions that the tenant agreed to, she refused him access.

The landlord points out in his written submission that while the tenant asserts that he did not complete the requested repairs within a reasonable time the tenant filed her Application for Dispute Resolution at least 3 weeks prior to one of her deadlines.

The landlord testified that he provided the tenant with his signed copy of the tenancy agreement within 15 days of the start of the tenancy for them to sign and return to him but that to date he has not received any copy from the tenants.

The landlord noted that despite the tenant's claim that it was his fault that she paid her rent late, it is the tenant's responsibility to provide the rent to the landlord not the landlord's responsibility to find the tenant to pay rent. During the hearing the landlord advised the tenant that rent can be mailed to the previously provided address as long as it arrives no later than the 1st of each month.

The landlord testified that the tenant has his cell number for any emergency contact and should he not be available if leaving town he will provide alternate emergency contact information at that time.

Analysis

1. and 2. The tenant has provided no evidence that the landlord "verbally evicted" her and the tenant continues to live in the rental unit with no indication from the landlord that he intended to end the tenancy. I also note that there is nothing in the *Act* that prevents a landlord from expressing anger or frustration with a tenant.

3. Section 29 of the *Act* allows the landlord to enter the rental unit only if one of the following applies:

1. The tenant gives permission at the time of entry or not more than 30 days before the entry;
2. At least 24 hours and not more than 30 days before the entry the landlord gives the tenant a written notice stating the purpose (which must be reasonable) and the date and time of entry.
3. The tenant has abandoned the rental unit; or
4. An emergency exists and the entry is necessary to protect life or property.

The section does not require the tenant to be present when the landlord enters, nor does it require the tenant's permission for the landlord to enter as long as the landlord has provided the required notice and the purpose is reasonable and related to the tenancy.

I accept, based on the testimony of both parties, while the landlord thought he had been given verbal permission to enter the rental unit to complete repairs the tenant clearly outlined her request for written 24 hour notice in her letter of July 8, 2011. As such, I order the landlord to comply with Section 29 when entrance is required to complete the renovations/repairs.

I note that compliance may include both parties agreeing to a specific timetable and schedule in advance and if so agreed this agreement should be made in writing and signed by both parties.

I also note that if 24 hour notice is required for each entry, the 24 hour notice must be provided to the tenant in accordance with Sections 88 and 90 of the *Act*. For example, if the landlord posts a notice of entry on the tenant's door (as allowed under Section 88) the notice is deemed received by the tenant on the third day after posting (as defined in Section 90) and the landlord may enter the property 24 hours after it is deemed received. If the notice is served personally to the tenant, the entry may occur 24 hours later.

4. and 5. Section 32 of the *Act* requires the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character, location of the rental unit make it suitable for occupation.

The tenant provided no evidence of the health, safety and housing standards required by law that she suggests the landlord is failing to meet. She provided no evidence to suggest the rental unit is unsuitable for occupation.

Section 33 defines emergency repairs as urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and are made for the purpose of repairing; major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks; or electrical systems.

While the landlord intends to make several of these repairs the tenant has failed to provide any evidence that these are emergency repairs as defined under Section 33. I find the tenant has failed to establish that any of the repairs or emergency repairs requested are required under the *Act*. I also accept the undisputed testimony of the landlord that the tenant prevented the landlord from access to the rental unit for the purpose of making repairs.

As such, I find the tenant is partially, if not solely, responsible for the landlord's inability to complete any requested repairs. I further find that the landlord can, therefore, not be held responsible for not making repairs that the tenant prevented him from completing. I dismiss the portion of the tenant's claim for a retroactive and a future rent reduction.

6. The tenant has provided no evidence that indicates whether or not the landlord has investigated any of her complaints and has therefore failed to substantiate this claim.

7. While the tenant has failed to provide any evidence of when the landlord provided her a copy of the tenancy agreement, I do accept that the landlord has failed to provide the tenant with a copy of a signed tenancy agreement. However, as the tenant has not signed the tenancy agreement and provided it back to the landlord so that he and the tenant can have a copy, I find it is the tenant is the one who has prevented the landlord from completing this obligation.

8. and 9. While failure for a landlord to complete a move in condition inspection and report at the start of the tenancy may extinguish the landlord's right to claim against the security deposit for any damage to a rental unit at the end of a tenancy, it does not extinguish the landlord's right to claim other monies owed to the landlord at the end of the tenancy. As such, there is no requirement for the landlord to return a security deposit to a tenant at any time other than in accordance with Section 38 at the end of the tenancy.

10. As noted above, the landlord has provided clear direction to the tenant as to how and when to pay rent.

11. I find this issue to have no relevance to this proceeding before me.

12. Based on the testimony of both parties, I find the tenant has the landlord's emergency contact information and has had it since the start of the tenancy.

13. The tenant has provided no evidence substantiating her claim that the landlord has informed the neighbours about anything. As such, I find, the tenant has failed to establish the landlord has had any influence or control over what a neighbour may state to the tenant.

14. There is no requirement under the *Act* for the landlord to advise the tenant as to who may be working on the property to complete renovations or repairs. In relation to the tenant's request for an order to have the landlord bring in an inspector, I find the tenant has failed to establish any need for such an order.

15. Despite the tenant's not signing the tenancy agreement, I find that by paying rent and occupying the rental unit both parties have accepted the terms of the tenancy agreement submitted into evidence by the tenant. I accept the agreement makes no mention of access to the locked storage unit on the residential property. I therefore find the storage shed is not included in the tenancy and the tenant has no right to access it.

16. I find, from the evidence and testimony of both parties, that the tenant was sufficiently responsible, at least in part, for some of this situation and cannot therefore hold the landlord responsibly for her stress.

In relation to the tenant's application for a monetary order for the costs associated with preparing her evidence and serving the landlord and the RTB with her evidence and documents for this hearing, I note these are choices made by the tenant to establish her case and there is no provision in the *Act* to require the respondent landlord to be held responsible for the applicant tenant's approach to presenting her case.

While I make no order in this regard, I suggest to both parties that as long as the tenancy exists the parties must find an appropriate method of communication. It should be a method agreed to by both parties and it may or may not involve a third party, it may be written or verbal, but the key is that both parties should agree to the method and do so in writing.

In relation to the incomplete repairs and renovations that the tenant still seeks to have completed, I suggest the tenant provide a current and up to date list to the landlord. I also suggest the landlord provide a written response to his commitment to complete any of the repairs and for those he does not think he should complete he provide a written explanation to the tenant.

Once a list is agreed upon, I suggest the parties also agree to a reasonable timeframe and if possible a specific timetable with dates and times of entry by the landlord or his agents completing the work and that his agreement be made in writing and signed by both parties.

If there are outstanding items that the landlord does not wish to complete and he has provided an explanation as to why he will not complete them but the tenant believes the landlord would be required to complete them under the *Act*, the tenant remains at liberty to file an Application for Dispute Resolution on those specific items.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety except for the noted order above to have the landlord comply with Section 29 of the *Act* when requiring entry to the rental unit.

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 15, 2011.

Residential Tenancy Branch