



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP

Introduction

This hearing was scheduled to hear the tenants' application to cancel a Notice to End Tenancy for Cause; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; for Orders for compliance with the Act, regulations or tenancy agreement; and Orders for repairs to the unit and property. The landlord did not appear at the hearing.

The tenant testified that the landlord was served with the hearing documents via registered mail sent to the landlord's service address, as it appears on the tenancy agreement, on October 8, 2011. I was provided a registered mail tracking number as proof of service of the hearing documents. The tracking information showed that the landlord refused to accept the registered mail on October 27, 2011.

Section 90 of the Act deems a party to be served five days after mailing so that parties cannot avoid service by refusing to accept registered mail. I was satisfied that the landlord named in the tenancy agreement was served with the hearing documents and I proceeded to hear from the tenant without the landlord present.

Although the tenants named two landlords in filing this application, the other respondent is not named on the tenancy agreement. The tenant explained that the other respondent is the landlord's manager who has a different address. I was not satisfied that the manager was served with the hearing documents. Therefore, the application was amended to name the landlord that is named in the tenancy agreement.

Issue(s) to be Decided

1. Should the Notice to End Tenancy for Cause be upheld or cancelled?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is it necessary to issue Orders for compliance or repairs to the landlord?

Background and Evidence

The tenancy commenced April 1, 2011 and the tenants are required to pay rent of \$1,125.00 on the 1st day of every month pursuant to a written tenancy agreement. The tenancy agreement indicates that heat is included in rent. Heat is provided by way of a central furnace. On September 27, 2011 the city building inspectors attended the property and the tenants advised the inspectors that they did not have heat in their unit. The rental unit is on the ground floor and does not have screens on the windows.

Notice to End Tenancy

On September 28, 2011 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the door of the rental unit. The tenants filed to dispute the Notice within the time limits required under the Act.

Monetary compensation

In filing this application the tenants requested compensation of \$4,700.00 for damage or loss under the Act, regulations or tenancy agreement.

In support of this claim the tenant pointed to a letter written to the landlord's manager on June 6, 2011. In the letter the tenants:

- ask when the bathroom would be fixed since the tenants had already waited two months for repairs;
- complain of:
 - mice in the rental unit;
 - the rental unit not be cleaned at the beginning of the tenancy;
 - lack of heat in the rental unit (down to 54 degrees) and using an electric heater for April, May and the start of June;
 - lack of a mailbox key for 1.5 months;
 - water seeping into the closet and ruining clothing; and,
 - The manager yelling and screaming at the tenants.

Also provided with the tenants' application was a letter addressed to the landlord's manager dated October 3, 2011. In that letter the tenants indicates they are seeking compensation of \$25.00 per hour for obtaining a new mailbox key from Canada Post and \$40.00 per month for lack of heat in the rental unit. The tenants indicate in the October 3, 2011 letter they would claim \$3,000.00 or more for unspecified damages.

During the hearing, the tenant indicated the landlord repaired the bathroom wall shortly after the June 6, 2011 letter; however, the tenants suffered a loss as a result of water

penetrating the wall of the adjacent closet. The tenant explained that tiles were missing from the shower wall and the landlord had put up some plastic in an effort to stop water from penetrating the wall but the plastic was ineffective. The tenants even purchased another shower curtain and put it up in an effort to stop the water from penetrating the wall. The tenant testified that the water still penetrated the wall and resulted in mould formation in the adjacent closet. The tenant submitted that designer jeans, suits and a duvet stored in the closet had to be thrown out due to mould. The tenant put a value of \$2,675.00 on these items.

During the hearing, the tenant submitted that only after the building inspectors were notified of a lack of heat on September 27, 2011 the landlord restored the heat to the unit but only during daytime hours. The tenant submitted that the landlord turns off the heat at night and the unit is so cold they must run their electric heater at night. The tenants estimated that the additional hydro costs to run the electric heater costs the tenants approximately \$40.00 per month.

During the hearing, the tenant requested \$360.00 in compensation for loss of groceries due to mice eating through boxes; \$40.00 for cleaning the rental unit of mice feces; and \$140.00 for having to pick up mail at the post office for three months and the cost of obtaining a new mailbox key; and, the equivalent of two month's rent in order to vacate the rental unit.

Request for Compliance and Repair Orders

The tenants are seeking Orders to require the landlord to do the following:

1. Repair buzzer system on building entrance so that guests can reach residents of the building;
2. Provide sufficient heat to the unit at all times of the day and night;
3. Repair bathroom fan as it is extremely loud;
4. Provide and install screens on the windows to stop mice from coming in the rental unit.

In addition, the tenant requested the landlord's manager be ordered to cease yelling and screaming at the tenants.

The tenants provided the following documentary evidence for this proceeding: the tenancy agreement; the Notice to End Tenancy; the June 6, 2011 letter and the October 3, 2011 letter to the landlord's manager.

Analysis

Upon consideration of all of the evidence before me, I make the following findings and provide the following reasons for my findings, based on the balance of probabilities.

Notice to End Tenancy

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to show the tenancy should end for the reasons on the Notice. Since the landlord did not appear at the hearing to establish that there is a basis for ending the tenancy, I grant the tenants' request and cancel the Notice with the effect that this tenancy continues.

Monetary Compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Considering the letters written to the landlord by the tenants, I find the tenants have consistently complained of the bathroom requiring repair and water damage that resulted from the bathroom repairs not made by the landlord in a reasonable amount of time. However, I find inconsistencies in the tenants' submissions of damages and loss they suffered. For instance, in the June 6, 2011 letter the tenants complain of ruined clothing but no mention is made that the clothing includes designer jeans or suits. Nor is there any mention of a duvet. I find a lack of evidence corroborating the items that were ruined or the value of the items; thus, I make no monetary award for mouldy clothing or a duvet. Although I make no award for loss of possessions, I find the landlord neglected to repair the bathroom wall in a timely manner and this resulted in a loss of use and enjoyment of the rental unit. I find a reasonable award for missing shower tiles and an unusable adjacent closet to be \$500.00 for the time period of April 2011 until mid-June 2011.

I find the tenants consistently referred to lack of a mailbox key in their communications to the landlord; however, the June 6, 2011 letter refers to lack of a key for 1.5 months and the October 3, 2011 letter refers to lack of a key for 3 months. I find the landlord had an obligation to provide the tenants with a mailbox key and as a result of this

violation the tenants suffered the inconvenience of picking up their mail at the Post Office. Based on the lesser period of 1.5 months, I find a reasonable award for the inconvenience of not having a mailbox key to be \$75.00. I make no award for the cost of a lock in the absence of a receipt.

Upon review of the tenancy agreement I find the landlord is required to provide the tenants with heat. I find the tenants have consistently complained to the landlord about the lack of heat. I find the tenants' request for \$40.00 per month a reasonable request for not being provided the heating service they are entitled to receive at all times of the day. For the months of April through October 2011 I award the tenants \$280.00 (\$40.00 x 7 months).

A landlord is required to provide tenants with a reasonably clean rental unit at the beginning of the tenancy and I find the tenants were consistent in their submission that the rental unit was dirty and contaminated by mice feces at the beginning of the tenancy. I find the tenants' request for compensation of \$40.00 for their time and cleaning efforts to be reasonable and I grant this award to the tenants.

I do not award the tenants compensation for loss of groceries due to mice eating through boxes as the tenants did not provide corroborating evidence of this loss; however, I find the tenants has consistently complained of a mouse infestation and I find the landlord's lack of sufficient response to be a violation of the tenant's ability to use and enjoy the rental unit. Therefore, I award the tenants \$360.00, the amount requested, for loss of use and enjoyment of the rental unit.

In light of the above findings, **the tenants have been awarded a total of \$1,255.00. The tenants are authorized to deduct \$1,255.00 for rent payable otherwise payable to the landlord until this award has been satisfied.** The tenants are also provided a Monetary Order in the event the tenancy ends before the award is satisfied.

Orders for Compliance and Repairs

Based upon the provisions of the tenancy agreement and the Act, I find that all of the tenants' requests are required in order to provide services and facilities they are entitled to and to repair the residential property so that it is suitable for occupation and meets health, safety and building standard laws. Therefore, I grant the tenants' request for the following Orders:

1. Repair buzzer system on building entrance so that guests can reach residents of the building;
2. Provide sufficient heat at all times of the day and night;

3. Repair bathroom fan as it is extremely loud;
4. Provide and install screens on the windows to stop mice from coming in the rental unit.

The landlord is provided until November 30, 2011 to fulfill the above orders. **I further ORDER that the rent is reduced by \$200.00 per month starting December 1, 2011.** Upon payment of \$925.00 per month the landlord must consider the rent paid in full. In order to restore the monthly rent to \$1,125.00 the landlord must obtain the authorization of a Dispute Resolution Officer by making an Application for Dispute Resolution and proving that Orders 1. through 4., as described above, have been fulfilled.

Based upon the evidence before me, I am satisfied the tenants have been yelled and screamed at by the landlord's manager. **The landlord is ORDERED to comply with section 28 of the Act which entitles the tenants to freedom to quiet enjoyment** of the residential property including freedom from unreasonable disturbance and significant interference by the landlord or the landlord's manager. Failure to comply with this order may be grounds for the tenants to seek additional monetary compensation from the landlord.

Conclusion

The Notice to End Tenancy issued September 28, 2011 has been cancelled and the tenancy continues.

The tenants have been awarded compensation of \$1,255.00 for lack of repairs and services. The tenants are authorized to withhold \$1,255.00 from rent otherwise payable until the award has been satisfied. The tenants have also been provided a Monetary Order in this amount in the event the tenancy ends before the award is satisfied.

The landlord has been issued various Orders for repairs and compliance with the Act as described in this decision.

The tenants are further authorized to reduce the monthly rent by \$200.00 starting December 1, 2011 until such time the landlord obtains the authorization of a Dispute Resolution Officer to restore the monthly rent to \$1,125.00 by proving the landlord has satisfied the Orders for repairs and services.

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: November 10, 2011.

Residential Tenancy Branch