



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling the Notice to End Tenancy for unpaid rent – Section 46;
2. An Order for compensation or loss under the Act, regulation or tenancy agreement – Section 67; and
3. An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The Tenant and Landlord were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing, it was determined that evidence filed by the Landlord yesterday was not received by this dispute Resolution Officer in time for the Hearing, nor was it served on the Tenant. Legal counsel for the Landlord asked for an adjournment in order for this evidence to be served on the Tenant and to be considered for the Hearing. Counsel submits that the evidence in the form of three letters, one from the Landlord, one from the Tenant’s witness and one from a third party, is necessary to ensure no prejudice to the Landlord in fully responding to the claim and that there was insufficient time to gather and serve this evidence before the Hearing. The Tenant objected to the adjournment on the basis that the evidence was not significant, that two of the authors of the letters, the Landlord and the Tenant’s witness, are in attendance at the Hearing and that the Tenant has fully prepared for the Hearing and is anxious to proceed. Although the Counsel submits that there was insufficient time to file these

letters, I find that as a usual course the amount of time provided in the present circumstances was no different than in any other case and as no other exceptional reasons were provided on this usual amount of time, I find that there was sufficient time to file the evidence in accordance with the time lines provided. Further, given that the authors of two of the letters are in attendance, I find that any evidence contained in the letters can be adequately provided by those authors and that there is therefore no prejudice to the Landlord in not adjourning the matter. Accordingly, I deny the request for an adjournment.

It was further confirmed by the Parties at the onset of the Hearing that the Tenant paid the rent within five days of receiving the Notice to End Tenancy for unpaid rent and that the Notice is no longer of any effect.

Issue(s) to be Decided

Is the Tenant entitled to a reduction in rent or compensation for loss?

Background and Evidence

The tenancy began on June 10, 2011. Rent in the amount of \$1,000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. The tenancy includes the provision of water to the unit, through a gravity fed system off a creek on the mountain. The Landlord informed the Tenant before the start of the tenancy that the unit could experience reduced water pressure on occasion due to the type of water system and that the rains during the fall season would improve the pressure.

The Tenant states that for the first month of the tenancy there was no problem with the water but that starting in July 2011 and on a “continuously sporadic” basis to November 20, 2011, the Tenant experienced severe reductions in water pressure, to a pencil thin flow, and for nine days before the end of October 2011, a total loss of water. The Tenant states that he was without the use of his shower and dishwasher for these periods.

The Tenant states that the Landlord was informed of the decrease in water pressure and loss of water in the beginning of August and that the Landlord instructed the Tenant to investigate the problem. The Tenant states that the Landlord told the Tenant to go onto the field and look for puddles. The Tenant states that he investigated the problem by speaking with neighbours and others who used the same water system, by going up the mountain on four occasions to investigate the source of the water and by excavating lines.

The Tenant states that the Landlord came out only a few times in August and failed to make any reasonable effort to identify and fix the problem and that the problem. The Tenant states that in September, it was determined that a local business was accessing the water and because the Landlord was reluctant to deal with this access, the Tenant excavated and disconnected the business from the water system. The Tenant states that this still did not resolve the water pressure problem and that rainfall during this period made no difference in the water pressure. The Parties do not dispute that the problem was finally determined on October 30, 2011 after a 3rd party located the broken water pipe line on its' land. The Tenant states that because of his investigations, he had earlier narrowed the problem down to the 3rd party's location but that this area was not inspected by the Landlord.

The Tenant claims the amount of \$1,000.00 for the loss of water pressure, total loss of water for approximately 9 days and for having spent time trying to locate the source of the water loss for the months of August, September and October 2011.

The Landlord states that he attended to the problem with the water starting in August and that he walked the water line nearly every day looking for a water break and that no other method of investigation would identify the problem. The Landlord confirmed that he did not speak with any other persons during his own investigations. The Landlord states that as soon as the problem was identified, the Landlord acted as quickly as possible and spent \$1,200.00 to repair the water system.

The Witness for the Tenant states that she was aware of the water problems being experienced by the Tenant, that the Tenant was out of water and that the Tenant spoke with the neighbours about locating the problem in the pipes lines. The Witness states that she observed the Tenant on two occasions taking the bobcat past her home. The Witness states that she herself ran out of water during the same period because something was wrong with the lines. The Witness states that during the summer a local business steals water from the system and that this reduces the water pressure. The Witness states that she no longer experiences water problems since installing her own pump system. The Witness states that the Landlord did not speak to her about the water problems until October 2011.

Analysis

Section 32(a) of the Act requires a landlord to 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.

This section of the Act operates to require a Landlord to make repairs within a reasonable period to ensure compliance and suitability. While I find that the Landlord attended to the investigations of the water problems within a reasonable time after being informed, I find that by not speaking with the neighbours or others who could reasonably be expected to have knowledge about the operation of the system on or near their property, the Landlord unreasonably limited the scope of investigations and caused an unnecessary delay to the length of the investigations and ultimate repair. I find that the Landlord's actions caused a loss of the Tenant's use of water and some facilities and appliances such as the shower and dishwasher for a longer period than what may be reasonably expected.

Given the undisputed evidence of the Tenant that the Landlord authorized the Tenant to make investigations into the problem, I find that this authorization was made in furtherance of the Landlord's obligations to make repairs and that the Tenant is therefore entitled to reasonable compensation for this work. I find that the Tenant is entitled to the amount of **\$300.00** for the loss of water and water pressure, and in the absence of evidence as to the numbers of hours spent by the Tenant is investigating the problem, I find that the Tenant is entitled to compensation for this work in the amount of \$500.00, for a total entitlement of **\$800.00**. As the Landlord has recently spent a significant amount repairing the problem, I order the Tenant to reduce future rent payable in lieu of the entitlement as follows: \$400.00 reduced from rent for January 2012 and \$400.00 reduced from rent for February 2012.

Conclusion

I order the Tenant to reduce rent for January 2012 by \$400.00 and to reduce rent for February 2012 by \$400.00 in full satisfaction of his claim.

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: December 5, 2011.

Residential Tenancy Branch