



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, FF*

Introduction.

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss of use of the deck, for the cost of a building inspection and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord negligent in responding to the tenant's complaints? Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on January 18, 2011 for a fixed term ending on January 31, 2012. Rent was \$1,350.00 due on the first of each month. Prior to moving in the tenant paid a security deposit and pet deposit in the amount of \$1,350.00.

On November 30, 2011, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property. The effective date of the notice was February 29, 2012. On December 06, 2011, the tenant moved out without notice. The landlord stated that the tenant put a stop payment on her rent cheque for December.

The rental unit consists of a detached two level home, approximately 2,000 square feet in area and has a deck which is approximately 300 to 400 square feet in area.

The tenant stated that on April 24, 2011, while sitting on a deck chair out on the deck, the leg of the chair went through the deck boards along with her leg. She was assisted by a friend. The tenant stated that she suffered an injury to her leg that bled but did not need stitches. The tenant did not seek medical assistance. Other than a statement from the friend who was present at the time of the incident, the tenant did not file any evidence regarding the events of that day.

The tenant stated that she informed the landlord about the incident but could not recall the date she did so. The landlord acknowledged receiving a call from the tenant but also did not recall the date.

The landlord stated that he contacted a repair man the same day that he received the call and the repairs were done shortly after. Neither party could recall the date the repairs were done. The landlord filed an invoice from the repair company dated June 10, 2011.

The landlord stated that the repairman, who fixed the boards on the deck, did not indicate that any further repair was required.

On July 20, 2011, at the suggestion of her son, the tenant had the deck inspected by a professional inspector. The report indicated that "*urgent repair/replacement is advised*". The overall inspection report used the code *RR* to describe the deck which stands for *Repair/Replace*. I note that the code *S* which stands for *Safety Issue* was not used in the report.

The tenant sent the report to the landlord who responded by mail on July 22, 2011. In his letter to the tenant, the landlord advised the tenant not to use the deck until repairs were carried out. The repairs were completed by September 28, 2011.

The tenant has applied for compensation for the loss of use of the deck and for the loss of quiet enjoyment for the period of April 2011 to January 2012 in the amount of \$4,860.00. The tenant has also applied for the \$100.00 that she paid for the inspection and \$50.00 for the filing fee

Analysis

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord fulfilled his obligations by acting on the tenant's complaint and making the necessary arrangements to repair the damage and restore services to the tenant.

Based on the evidence in front of me and the sworn testimony of both parties, I find that the tenant was deprived of the use of the deck from July 22 to September 28, 2011. Even though the tenant argued that the deck was not safe to use from April 24, the inspection report indicates that repair or replacement is advised. The inspector had the option of using a different code to describe the deck which would indicate safety issues, but did not do so.

Therefore based on the report filed by the tenant, I find that the deck needed repair, which was done in September 2011. At the request of the landlord, the tenant lost the use of the deck from July 22 until it was repaired on September 28, 2011.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work and did lose the use of the deck for approximately two months. Therefore I find that the tenant is entitled to nominal damages.

Since the deck is approximately 300 to 400 square feet and the house is approximately 2000 square feet I find it appropriate to award the tenant nominal damages in the amount of \$500.00 for the loss of use of the deck for two months. The tenant has to bear the cost of the inspection as she took it upon herself to order it. Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of \$50.

Overall the tenant has established a claim of \$550.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$550.00.

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 30, 2011.

Residential Tenancy Branch