



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

DRI, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have disputed an additional rent increase, requested compensation for the cost of emergency repairs, an order the landlord make emergency repairs to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenants entitled to compensation for the cost of emergency repairs?

Should the landlord be Ordered to comply with the Act?

Has the landlord issued a rent increase in breach of the Act?

Are the tenants entitled to filing fee costs?

Background and Evidence

The first page of a tenancy agreement was supplied as evidence. The parties agreed that the rent was \$1,750.00 per month, due on the first day of each month; less deductions that had been allowed for work to be completed by the tenants, as contained in a schedule A. A copy of the schedule was not supplied as evidence.

On June 21, 2011, the landlord issued a Notice of Rent Increase effective October 1, 2011. The landlord made an error on this Notice, and inadvertently reduced the rent by the amount equivalent to the allowable increase; to \$1,610.00. The tenant stated she

called the landlord and was told the Notice was correct. The tenant called the Residential Tenancy Branch and was told the Notice was effective.

On October 1, 2011, the tenants paid rent in the sum of \$1,610.00. The landlord realized an error had been made on the June 21, 2011 Notice of Rent Increase and then issued an October 21, 2011, Notice of Rent Increase, based on the original rent owed, in the allowable amount, increasing rent to \$1,825.25 effective February 1, 2012.

The landlord based the October 21, 2011 increase on the original rent owed, as they had clearly meant to increase the rent effective October 1, 2011. The landlord has not wished to enter into a conflict with the tenant, and issued the October, 2011 Notice as a correction of the error made.

The tenant submitted that the increase dated October 21, 2011, is not effective as it is the second Notice of Rent Increase issued within a 12 month period.

The parties agreed that the tenant had a plugged kitchen sink; that this occurred over a weekend. The tenants made the repair themselves, as they noticed on the landlord's web site, that he was away. The tenants did not call the landlord's emergency number that is to be used on weekends; this service provides a current emergency phone number.

The landlord has recently repaired the dishwasher. The landlord is in the process of repainting the garage door and a shower leak. This was not disputed by either party. There was a problem with access for the repairperson when he attempted to enter several days ago; the tenant did not give him access as she had to go to the hospital.

The tenant stated the exterior windows require cleaning. The tenant finds the windows draughty. The tenant stated that garbage collection is included in the agreement; however she is willing to remove the garbage.

The tenant supplied a list of costs for stair nosing, a lawn mower, kitchen plumbing and labour. No verification of these costs was supplied.

Analysis

In relation to the tenant's submission regarding the rent increase; despite information that the tenant and landlord may have been given over the telephone; a dispute resolution officer has the delegated authority to make findings of fact. I have considered the intent of the Notice of Rent Increase issued on June 21, 2011, and the validity of that Notice.

It is clear that the Notice of Rent Increase issued on June 21, 2011, contained a clerical error. It does not make sense that the landlord would issue a Notice of Rent Increase, in the approved form, so that rent could be reduced. In relation to the submission that the landlord told the tenant the form was correct; I find it reasonable to accept that the

landlord had not examined the Notice closely and that it would border on the absurd to find that the landlord issued a Notice of Rent Increase so that rent could be decreased.

Therefore, I find that the Notice issued on June 21, 2011, did not constitute a Notice of Rent Increase. I find, on the balance of probabilities that the landlord had not accepted a reduction in rent owed; as once they became aware of the reduced rent payment made on October 1, 2011, they issued a correct Notice of Rent Increase; effective February 1, 2012.

I find it was unreasonable for the tenant to expect to benefit from a clerical error made by the landlord and for the tenant to rely upon a Notice that did not impose a rent increase when the obvious purpose of the Notice was to increase the rent as provided by the Act.

I find that the tenant's rent remained at \$1,750.00 and that the reduction in rent paid from October 1, 2011 to January, 2012, was accepted by the landlord as a good will gesture until the October 21, 2011, Notice became effective and, as part of their intention to avoid conflict with the tenant. Therefore, I find that the Notice issued on October 21, 2011, is valid and that effective February 1, 2012, rent will increase from \$1,750.00 to \$1,825.25.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord is currently completing repairs to the unit and it is suggested, as provided by Residential Tenancy Branch policy, that the landlord inspect the exterior windows to establish the need for cleaning by the landlord. The dishwasher is repaired, and an attempt within the past week to enter for repairs was thwarted when the tenant left the premises and the repairperson was not granted entry.

There is no evidence before me that any Order should be issued to the landlord in relation to repairs as required by section 32 of the Act. The tenant did not provide any evidence that supports repairs needed as a result of a breach of the Act. Further, in the absence of any verification of the amounts claimed by the tenant I find that the compensation claim is dismissed.

I explained the steps required in relation to emergency repairs; the tenant is to call the landlord's after hours phone number and then use the emergency number provided by the answering service. I also explained section 29 of the Act, which determines entry to a rental unit by the landlord. A tenant is not required to be present when the landlord has given proper notice of entry during the allowable hours, for the purpose of making repairs.

I have appended a copy of relevant sections of the Act after the conclusion of this decision.

Conclusion

The tenant's application is dismissed.

Effective February 1, 2012 rent due will be \$1,825.25.

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: January 12, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Landlord and tenant obligations to repair and maintain

- 32** (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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.