



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MNDC, OLC, RP, PSF

Introduction

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

The Landlord applied on October 17, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain all or part of the security deposit- Section 38;
4. An Order to recover the filing fee for this application - Section 72; and
5. Other.

The Tenant applied on December 22, 2011 for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order for the Landlord to comply with the Act, make repairs to the unit and provide services or facilities required by law – Sections 62, 32 and 65.

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

Preliminary Matter

At the onset of the Hearing, it was clarified that the Tenants were no longer in the unit. Accordingly, I dismiss the Landlord's claim for an Order of Possession and the Tenants' claim for orders in relation to repairs and services and compliance.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Are the Tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 1, 2007 and ended on October 12, 2011. Rent in the amount of \$1,400.00 was 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 \$700.00. No move-in or move-out inspection was conducted with the Parties or offered by the Landlord. On September 30, 2011, the Tenants sent an email to the Landlord informing that they would be moving out of the unit by September 15, 2011. This email sets out a number of reasons for ending the tenancy and asks that the security deposit be used to pay the rent to their move-out date. The Landlord did not agree to this and upon the Tenants' failure to pay rent for October 2011, the Landlord served the Tenants on October 2, 2011 with a 10 day notice to end tenancy for non-payment of rent with a move-out date of October 12, 2011. The Tenants moved out of the unit and provided their forwarding address on October 12, 2011. The Landlord claims the amount of \$1,400.00 in unpaid rent and \$200.00 for agency expenses incurred for attending the hearing.

The Tenants state that as a result of the Landlord's lack of action in relation to repairs to the unit and to problems being caused by the tenants living in a unit below, the Tenants suffered a loss of quiet enjoyment. Further, the Tenants' argue that this was a material breach of the tenancy agreement allowing the Tenants to move out of the unit with only 15 days notice to the Landlord.

The Tenants state that from the start of the tenancy, the Tenants experienced plumbing problems that caused the toilet to plug, overflow and leak. The Tenants state that they first informed the Landlord of the problem on February 8, 2008 and repeatedly thereafter on a near monthly basis until the Landlord sent a plumber on November 28, 2008. The Tenants state that the plumber simply snaked out the toilet. The Tenants state that the plugging and back up problems continued and email evidence indicates that at least by April 2011, backups were now happening approximately twice a month

and the Tenants were plunging the toilet weekly. The plumber returned to fix the problem in May 2010 however the Tenants state that the problem was not fixed and the plumber told the Tenants that their bowel movements were causing the problems and to flush the toilet intermittently during their business. One of the Tenants said this method was tried but made no difference to the plugging. The Tenants state that the problem was never fixed by the time the tenancy ended. The Tenants state further that the plumbing to the bathtub and bathroom sink also had problems that would cause water to leak into the unit below. The Tenants state that during the entire tenancy, the bathtub was only used once.

The Landlord states that the problem with the toilet plugging was caused by the Tenants. The Landlord supplied a letter from the plumber indicating that nothing was wrong with the plumbing but that the Tenants were causing the problem: the bowel movements of the Tenants were too large and hard and the plumber recommended that the Tenants flush periodically throughout their business on the toilet. The plumber's letter indicates that since making this recommendation, the plumber was not called back in again.

The Tenant states that in January 2008, they reported various problems, including electrical problems, to the Landlord. The Tenants state that the Landlord did not attend to look at the electrical problems for several months and finally fixed some of the problems sometime near the end of 2008. The Landlord states that she was not informed until March 2008 that there were any problems and sent a handyman approximately a month later. The Landlord states that as of May 2008, no more electrical problems were reported by the Tenants.

The Tenants state that in September 2009, they informed the Landlord about problems with the downstairs tenants. The Tenants state that between this date and April 2011, the problems escalated to the point where the Tenants suspected the downstairs tenant of cutting their cable and slashing the tires on their car. The Tenant provided copies of the emails sent to the Landlord during this period of time informing the Landlord of the

actions of the tenant and their concerns. The Tenants state that they complained numerous times until the summer of 2011 and that the police were called at least seven times during the length of the downstairs tenancy. In an email dated June 28, 2011, the Tenant informed the Landlord that the downstairs tenant was witnessed slashing the Tenants' car tires and that this incident had been reported to the police. On July 10, 2011, the Landlord informed the Tenant that the downstairs tenant would be remaining in the unit until the end of August 2011. The Tenants state that on July 22, 2011, the police found loaded guns in the downstairs unit and that the Landlord was again informed of this but that nothing was done. The downstairs tenant moved out on September 1, 2011. The Landlord states that each time the Tenants called about problems with the lower tenant, the Landlord addressed those problems and did try to resolve disputes. The Landlord states that the downstairs tenants had registered hunting guns and that the incident involving the police finding loaded guns was in relation to a suicide attempt by a person living in the downstairs unit.

The Tenants state in summary that within two years of the tenancy they started looking for another rental but their requirements for a single family residence suitable for their disability needs was not found until September 2011. The Tenants state that their notice to end the tenancy also informed the Landlord that they were forced to move due to the ongoing plumbing and downstairs tenant problems. The Tenants claim the amount of \$4,800.00 in compensation for the Landlord's failure to make repairs over the length of the tenancy and for the Landlord's breach of their quiet enjoyment in relation to the lower tenant.

The Landlord states in summary that there were no plumbing problems, that the electrical problems were minor and fixed with the longest repair time being one month and that the Tenants never complained to the Residential Tenancy Branch.

Analysis

Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. Given the Landlord's election to end the tenancy by serving a 10 day notice with a move-out date of October 12, 2011, and given that the Tenants moved out on that date, I find that the issue of whether the Tenants had a right to end the tenancy on a later date due to a material breach no longer has any relevance. Accepting the undisputed evidence that the Tenants did not pay any rent for October 2011, I find that the Landlord is entitled to rent to the effective date of the notice of October 12, 2011. As the per diem rate for rent for October would be \$45.16 ($\$1,400.00 / 31 = 45.16$), I find that the Landlord is entitled to the amount of **\$541.92** (45.16×12). Setting the security deposit of **\$700.00** off this amount leaves the sum of **\$158.08** owing to the Tenants. As costs claimed for the agents appearance at the Hearing is not a loss related to the tenancy, I dismiss this claim of the Landlord. I also decline to make an award in relation to recovery of the filing fee.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of repair that would be reasonably required. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Accepting that the Tenants repeatedly complained about the plumbing and noting that the Landlord did not dispute that it took 9 months to first investigate the Tenants' toilet and then another year and a half to again investigate the continuing problem, I find that the Landlord, by not taking steps to even address the problem within a reasonable time, was negligent in responding to their duties required under Section 32. Further, I find it very difficult to accept that a toilet would consistently plug and overflow by normal usage of the toilet. Giving the continuous and longstanding problem with the toilet, I find that the Landlord failed to reasonably further investigate the problem and as a result the

Tenants suffered a loss. In determining an award for this loss, I take into account that this problem was experienced over the length of the tenancy and increased in severity over time, but that the toilet still functioned minimally due to the Tenants' efforts. While the Landlord argues that the Tenants should have pursued a claim for the non-functioning toilet, I find that as such pursuit does not alleviate a Landlord's obligations to make repairs, this argument is not relevant to the duties of the Landlord but may serve as a mitigation effort for losses. Taking this factor into account as well therefore, I find that the Tenants suffered some inconvenience and are therefore entitled to a monetary award for their loss in the amount of **\$200.00**. Given the remoteness in time of the Tenants' claim in relation to electrical problems and no evidence to indicate that these problems were significant or caused any loss to the tenants, I decline to consider these items as part of the monetary award above.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. Noting that the Landlord did not dispute the Tenants' evidence in relation to the actions of the lower tenant, without considering the reasonable apprehension from the presence of loaded guns, and accepting that tire slashing is indicative of a disturbance beyond reasonability of any kind, I find that the Tenants were subject to unreasonable disturbance by the lower tenant. Although the Landlord states that they addressed problems with the downstairs tenants, I find it unreasonable that after being informed by the Tenant of the tires being slashed by this tenant and loaded guns being in this tenant's unit, and noting that the actions of this tenant became more aggressive over time, that the Landlord took no action to pursue the removal of this tenant at any point. I find that the Tenants have substantiated a loss of quiet enjoyment in relation to this unreasonable disturbance and that they are entitled to reasonable compensation in the amount of **\$500.00** for this loss. The Tenants are also entitled to recovery of the **\$50.00** filing fee. The total monetary award for the Tenants is **\$908.08**.

Conclusion

I order that the Landlord retain the amount of \$541.92 from the security **deposit** and interest of \$700.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the amount of **\$908.08**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 23, 2012.

Residential Tenancy Branch