



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, RR

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act; Orders that landlord comply with Act and complete repairs and emergency repairs and an order allowing the tenant to reduce rent for repairs that were agreed upon but not provided.

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

Is the tenant entitled to compensation in the sum of \$1,800.00 for damage or loss under the Act?

Must the landlord be Ordered to comply with the Act by making repairs and emergency repairs?

Is the tenant entitled to rent abatement for repairs that were agreed upon and not made?

Background and Evidence

The tenancy commenced on March 29, 2011; rent is \$900.00 per month, due on the first day of each month. A move-in condition inspection report was completed but the tenant refused to sign it as she was unhappy with the state of the unit. The landlord stated she could have signed as disagreeing with the report.

The parties agreed that the previous occupants of the unit had been smokers and that the unit was so in need of cleaning and painting that at the start of the tenancy the

landlord provided the tenant with compensation to cover a 10 period of time during which the tenant had to be out of the unit to allow for rehabilitation. The tenant stated the compensation was reasonable.

The tenant stated there were 5 outstanding issues that continue to require repair:

- Carpets;
- Bathroom linoleum;
- Shower water temperature;
- Bathroom sink leak; and
- The kitchen counter.

The tenant stated that once she moved into the unit it quickly became apparent that the bedroom carpet that smelled of urine. The parties agreed that at the start of the tenancy the landlord had the carpets cleaned and deodorized; the tenant stated this was the equivalent of putting perfume on the carpets.

The tenant supplied photographs of the carpet in the living and the dining room, to demonstrate the need for carpet replacement. The living room carpet has a large stain and there are some marks visible around the edge of the dining room carpet.

The photographs submitted by the tenant show what appears to be mould on the kitchen counter; the tenant stated that after cleaning it quickly reoccurs. One photo taken of the underside of the counter showed dirt and moisture marks.

The landlord acknowledged that throughout the tenancy the tenant has made requests to have the kitchen counter repaired, the shower fixed; the linoleum replaced and the carpets replaced. The carpets are approximately 8 years old. The landlord stated that the living room carpet was not stained at the start of the tenancy and that a February 8, 2012, investigation for urine and moisture in the carpet determined that there was no smell or moisture in the child's bedroom carpet. The report submitted as evidence, mentioned the large stain the living room, that it was pulled up and found to be sticky and old.

The landlord stated that they now have a plan to make repairs to the temperature control in the shower and that the tiles will be grouted at the same time. The child's bedroom carpet will be replaced and the kitchen counter will also be replaced. The landlord has made arrangements to have the linoleum replaced from the kitchen to the patio area.

The landlord has just recently become aware of the reported leak below the bathroom sink and will investigate and repair any leak.

The landlord has not had any complaints from other occupants in relation to water issues in the showers and in May 2011, they did have work completed in the shower, in an attempt to address the water temperature issue. An invoice was supplied as

evidence of this repair. The tenant acknowledged this repair but had continued to report problems with the temperature of the shower going from very hot to very cold without warning. The tenant confirmed she was able to bathe in the bathtub.

The tenant expressed extreme frustration with the landlord, who has only recently made plans for the necessary repairs; the tenant believes is in response to her Notice of hearing. The tenant believes that 4 months was a reasonable period of time for the landlord to complete the repairs they had promised to make at the start of the tenancy. When the landlord failed to carry out the repairs to the flooring, kitchen counter and carpet within a reasonable period of time, despite repeated verbal requests, the tenant made her application. The tenant believes that she should be compensated for the loss of value of the tenancy from August 2011, to February 2012, in the sum of \$150.00 per month.

The tenant supplied copies of several letters of support in relation to her standing as a tenant and the state of the unit.

Analysis

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 did take steps at the start of the tenancy to make the unit more habitable and the tenant acknowledged the provision of appropriate compensation for the 10 days she had to be out of the unit. Shortly afterward, however, the tenant reported that the carpets smelled and she requested replacement. There is no dispute that the tenant has asked, through the remainder of her tenancy to have deficiencies repaired. There was evidence before me of an effort in May, 2011, to repair the shower issue; the carpets were inspected in February, 2012, which determined that the living room carpet had a large stain, sticky seams and was older. No smell or moisture was detected.

The landlord has recently agreed to carry out repairs as follows:

- Replace the child's bedroom carpet;
- Replace the linoleum from the kitchen to the patio;
- Repair the shower temperature issue and grout shower tiles;
- Replace the kitchen counter; and
- Inspect the bathroom sink for leaks.

As the landlord has now recognized that these repairs are required, pursuant to section 62(3) of the Act, I Order the landlord to ensure that this work be completed no later than

March 23, 2012. Once the repairs are all completed, I find that the landlord must be issue the tenant a written notice, indicating that the repairs have been completed.

In relation to the tenant's claim for compensation and rent abatement, I have considered section 32 of the Act, which provides, in part:

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.

There is no evidence before me that the unit was not suitable for occupation after the initial repairs were completed at the start of the tenancy. However; there continued to be issues that had yet to be addressed by the landlord, which the tenant and the landlord's agent agree required attention. The landlord has now decided to complete repairs on items that the tenant has long requested be addressed.

The landlord's agent confirmed that these repairs will be completed as a direct result of the tenant's constant requests that have been made throughout the tenancy.

When considering awards for damage, such as a loss of value of a tenancy, Residential Tenancy Branch policy suggests that I consider the following in determining damages:

- the amount of disruption suffered by the tenant;
- the reason for the disruption;
- if there was any benefit to the tenant for the disruption; and
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

Policy also suggests that I may award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; I find this to be a reasonable stance.

I find, on the balance of probabilities, that the landlord did make several attempts to address the tenant's concerns, by having a plumber attend in May, 2011, and by having the carpets inspected on February 9, 2012. However, it is clear that the tenant has brought forward a number of issues related to maintenance that the landlord has chosen to ignore up until the time the tenant filed her application for dispute resolution.

The issues identified have, on the balance of probabilities, caused a reduction in the value of the tenancy. I have considered the loss suffered as nominal; there is a loss, but the amount was not proven. Therefore, I find that the tenant has suffered a loss of

value of her tenancy over the period of August 2011 to February, 2012; in the nominal sum of \$200.00 which may be deducted from the next month's rent due.

Therefore, I find that a failure to complete the necessary repairs, as listed above, by March 23, 2012, will result in rent abatement to the tenant for loss of value of the rental unit in the sum of \$5.90 per day. Therefore, I Order:

- the landlord to complete the repairs set out above no later than March 23, 2012;
- that once the repairs are completed the landlord must give the tenant a written notice indicating that all of the repairs are completed;
- that if the repairs are completed by March 23, 2012, and written notice of such is given to the tenant by that date, no rent abatement shall be allowed;
- that if all of the repairs are not completed and written notice is not given to the tenant by March 23, 2012, the tenant may commence, effective March 24, 2012, making a daily deduction from rent owed in the sum of \$5.90 per day until such time as all of the repairs are completed and the landlord provides the tenant with written notice confirming repairs are complete.

Any rent reductions made by the tenant once repairs have been completed and written notice given, may be treated as unpaid rent.

The balance of the tenant's monetary claim is dismissed.

There was no claim for emergency repairs.

Conclusion

The tenant may deduct \$200.00 from the next month's rent due, as nominal compensation.

The landlord has been Ordered to complete repairs, as set out above. If the repairs are not completed as Ordered the tenant may commenced rent abatement, as Ordered.

The balance of the tenant's monetary claim and emergency repairs is dismissed.

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: February 29, 2012.

Residential Tenancy Branch