

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, RR, FF

Introduction

This is an application filed by the Tenant for a monetary order for compensation for loss under the Act, regulation or tenancy agreement. The Tenant also seeks the Landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, provide services or facilities required by law, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and each has made detailed reference to the evidence submitted by the other, I find that each party has been properly served with the notice of hearing and evidence packages under the Act.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on April 30, 2012 at 1:00 pm. The Landlord shall receive an order of possession to reflect this.

The above particulars comprise full and final settlement of possession of the tenancy aspects of the dispute arising from this application for both parties.

It was further clarified during the hearing that the Tenant is withdrawing portions of the application which are:

The Tenant withdraws her application for emergency repairs (ERP).

The Tenant withdraws her application for the Landlord to comply with the Act, regulation or tenancy agreement (OLC).

The Tenant withdraws her application for the Landlord to provide services or facilities required by law (PSF).

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?
Is the Tenant entitled to repairs to the unit?
Is the Tenant entitled to reduce rent for repairs?

Background and Evidence

This Tenancy began on September 1, 2011 on a fixed term tenancy until August 31, 2012 as shown in the submitted copy of the signed tenancy agreement. The monthly rent is \$895.00 payable on the 1st of each month. A security deposit of \$440.00 was paid on August 4, 2011. A move-in condition inspection report was completed on September 1, 2011.

The Tenant seeks a monetary order for \$3,310.00 for the loss of quiet enjoyment consisting of \$2,685.00 equal to 3 months rent (\$895.00 per month), future moving costs of \$200.00 and the return of the \$440.00 security deposit.

The Tenant claims that she suffered a loss of quiet enjoyment because of re-piping renovations that started on October 1, 2011 and ended on December 16, 2011. The Tenant states that she suffered a loss of quiet enjoyment and has submitted written statements describing her discomfort. The Landlord disputes this stating that while there was extensive re-piping done on the entire property that only 46 hours of actual work occurred in the Tenant's rental unit between November 14, 2011 and December 8, 2011.

The Tenant also states that she suffers from excessive heat in the rental unit. The Tenant states that this started on October 1, 2011 and continues to the date of this hearing. The Tenant states that she routinely leaves her windows open and has fans on all of the time. Both parties agreed that this was reported in October 2011 to the Landlord who had a heating specialist investigate the problem. The Landlord states that it was determined by the heating technician that no problems existed. The Landlord states that there is only 1 thermostat for the entire building and that it is set to go on at 17 Celsius and reaches a temperature between 23 -24 Celsius. The Tenant is unable to provide any information on the temperature of the excessive heat. The Tenant also states that excessive noises come from the radiators throughout the day and night preventing her from sleeping properly. The Landlord states that this was also looked at by the Landlord's heating technician, who could not find the problem or hear any noises

The Tenant seeks repairs to the heating system. The Landlord disputes this stating that the building is 45 years old and the furnace is approximately 20 years old when the Tenant moved in. The Landlord states that there is nothing wrong with the heating system.

The Tenant also seeks to be able to reduce rent for a total of \$895.00. The Tenant states that this is an arbitrary amount to compensate her for the excessive heat and noise from the radiators.

Analysis

The onus or burden of proof is on the party making the claim. In this case the Tenant is responsible as she has made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find that the Tenant's claim of excessive heat has not been established. Both parties agreed that there is only 1 thermostat and the Landlord has indicated that the heat turns on at 17 and holds at between 23-24 Celsius. The Tenant has not provided any evidence to support her claim. The Tenant's application for heat repairs is dismissed as well as that of her request for a reduction in rent.

The Tenant's claim for compensation for loss of quiet enjoyment has not been established. The Tenant has provided evidence in her submissions of discomfort and inconveniences suffered as a result of the re-piping renovations. Residential Tenancy Policy Guideline #6 states that "Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment." "It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises." I find that the Tenant has not established a claim for \$2,685.00 for a loss of quiet enjoyment. However, I do find that the Tenant suffered a loss of use for 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. I grant a

nominal award to the Tenant for the period of limited loss of \$50.00. This is a pro-rated amount for the monthly rent for the approximate loss of the 46 hours of work performed in the rental unit.

The Tenant's application for recovery of future moving costs of \$200.00 and the return of the security deposit are dismissed. I find that the Landlord is not liable for future moving costs and the disposition of the security deposit is premature as the tenancy has not yet concluded. The security deposit shall be complied with in accordance to Section 38 of the Residential Tenancy Act.

The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$100.00 under section 67 of the Act.

Conclusion

The Landlord shall receive an order of possession for April 30, 2012 by mutual agreement.

The Tenant is granted a monetary order for \$100.00.

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: February 21, 2012.

Residential Tenancy Branch