



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for a monetary order for compensation for damage or loss, rent reduction, recovery of the filing fee, orders for emergency repairs for health or safety reasons, repairs to the unit, site or property, and for the Landlord to comply with the Act, regulation and tenancy agreement.

The Tenant testified that he served the Landlord by registered mail with the Application for Dispute Resolution and Notice of Hearing on February 01, 2012, and provided the tracking information from the Canada Post receipt. I find that the Landlord was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Landlord did not participate in the conference call hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Tenant indicated several matters of dispute on his Application; however, there are only a few primary issues that are appropriate to deal with during this proceeding: orders for emergency repairs for health or safety reasons, repairs to the unit, site or property, and for the Landlord to comply with the Act, regulation and tenancy agreement, and the filing fee for this Application. The Tenant indicated no objection to the severing of his other issues in dispute.

Pursuant to 2.3 of the Rules of Procedure I have determined that it is appropriate to dismiss the Tenants' other disputes, a monetary order for compensation for damage or loss, and a rent reduction, as set out on his Application with liberty to reapply.

Issue(s) to be Decided

Is the Tenant entitled to orders against the Landlord for emergency repairs or repairs to the unit, site or property and recovery the filing fee?

Background and Evidence

The Tenant testified that his tenancy commenced May 01, 2011 and that he has a tenancy agreement in writing with the Landlord for a monthly rent of \$575.00 due on the first of each month, which includes utilities such as heat, electricity, cable, and water. The Tenant did not provide a copy of the written tenancy agreement into evidence on or before the date of the hearing, however testimony about the tenancy agreement was provided by the Tenant. The Tenant stated that he paid a security deposit of \$287.50 at the start of the tenancy. The Tenant stated that the tenancy agreement is for a fixed term, which expires on May 12, 2012. The Tenant stated that a move-in inspection was done at the stated of the tenancy. The Tenant did not provide a copy of the move-in inspection report into evidence on or before the date of the hearing. The Tenant stated that the Landlord wrote on the tenancy agreement that the suite has a small leak by the entrance to the bedroom from the foundation. The tenant stated that rental unit is a one bedroom basement suite with its own bathroom and kitchen, and that there is an area for storage under the stairs between the bedroom and living room area. The Tenant stated that the Landlord's building is a converted house with six rental units, and that the Landlord does not live on site and that the property manager also lives offsite.

The Tenant stated that when he signed the tenancy agreement with the Landlord, PL, he was told that the leak was very minor when it rains and only near the entrance to the bedroom door. The Tenant stated that the property manager, EM, told him that they thought the leak was fixed.

The Tenant provided photos in evidence of excess water flowing into his suite from several areas of the bedroom and behind the couch in the living room due to rain on November 22, 2011. The Tenant stated that it was like a flood of water and not a minor leak, as the Landlord had told him at the start of the tenancy. The Tenant stated that he called and texted the property manager, EM, immediately as she was the Landlord's emergency contact. The Tenant stated that it he advised EM that the water was flowing up from the foundation into the living room and several areas of the bedroom, and under the stairs. The Tenant stated that it was like a flood as the water in the bedroom was so excessive it flowing all the way out into the living room as well. The Tenant stated that while EM assured him that they had thought the issue was previously fixed, that they would look into the issue and fix it before Christmas. The Tenant provided into

evidence a copy of a letter he wrote and mailed to the Landlord, PL on November 25, 2011 advising him of the concerns he had due to the flood in his suite and his request for resolution to the flooding, and a request for rent reduction. The Tenant stated that he saw no work being done in November or December by the Landlord, and no rent reduction was provided. The Tenant stated that his rental unit continued to have water issues each time it rained so he advised the Landlord and the property manager that he would be filing a claim with our office as the issue had not been resolved and that the repairs must not have been done that he requested.

The Tenant provided photos in evidence of excess water flowing into his suite again in several areas on January 29, 2012 due to the rain. The Tenant stated that the Landlord and the property manager are ignoring his requests and will not talk to him.

The Tenant stated that he cannot afford to do the repairs to the rental unit, site, and property, and he is seeking orders to the Landlord so the water incursion issue will get resolved. The Tenant stated that he is not sure if a mould issue is developing or not and whether the rental unit is safe for occupancy as he has not spoken with the City or the health unit at this time. The Tenant stated that he is willing to remain in the rental unit with a rent reduction or be put up by the Landlord in a hotel while the work gets done, however the Landlord is not communicating with him at this time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

I find it reasonable that the Tenant expected the rental unit, site and property to be maintained and repaired as necessary in a reasonable period of time. I accept the evidence provided by the Tenant in the absence of any evidence from the Landlord, who was duly served. I find that based on the Tenant's evidence and testimony that the rental unit has significant water incursion issues each time it rains, well beyond a minor leak. The Act requires the Landlord to ensure that the rental unit complies with the health, safety and housing standards required by law and that the rental unit is suitable for occupation by a tenant.

As a result, I order the Landlord to have the rental unit, foundation of the building, and any other areas that may be causing water to flow, leak, or flood into the rental unit during rain, to be inspected by a professional to determine any work that needs to be done within 10 days; and if the professional determines repairs need to be done, I order the Landlord to carry the repairs out within 30 days.

If the Landlord fails to comply with the order within the timeframes stated, then the Tenant may apply for monetary compensation.

As the Tenant has succeeded in his Application, I find that he is entitled to \$50.00 for the filing fee he paid for the Application. I order the Tenant to deduct \$50.00 from the next month's rent. The Tenant must still pay the balance of the rent after deducting the \$50.00 on the date rent is required by the tenancy agreement and the Act.

Conclusion

The Tenant's other issues in dispute: a monetary order for compensation for damage or loss, and rent reduction, as set out on his Application are dismissed with liberty to reapply.

Pursuant to the Act, the order to the Landlord is as follows:

I order the Landlord to have the rental unit, foundation of the building, and any other areas that may be causing water to flow, leak, or flood into the rental unit during rain, to be inspected by a professional to determine any work that needs to be done within 10 days; and if the professional determines repairs need to be done, I order the Landlord to carry the repairs out within 30 days.

If the Landlord fails to comply with the order within the timeframes stated, then the Tenant may apply for monetary compensation.

I find that the Tenant is entitled to **\$50.00** for the cost of filing the Application, and I order the Tenant to deduct \$50.00 from the next month's rent.

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