

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This is an application filed by the Tenants for a monetary order for money owed or compensation for damage or loss, to have the Landlord make repairs to the unit, 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. The Landlord has confirmed receipt of the Tenant's two evidence packages. The Landlord has submitted no evidence. As both parties have attended the hearing and have confirmed receipt of all evidence submitted, I am satisfied that each has been properly served under the Act.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the Landlord to make repairs?

Is the Tenant entitled to an order to reduce rent?

Background and Evidence

Both parties agreed that the Tenancy began on November 1, 2011, the monthly rent is \$1,100.00 payable on the 1st of each month and a security deposit of \$550.00 was paid.

The Tenant states that there is no signed tenancy agreement and the Landlord disputes this stating that he has a signed 1 year fixed term agreement. Neither party has submitted any evidence of a signed tenancy agreement.

The Tenant seeks a monetary order for \$550.00 of compensation for loss under the legislation. The Tenant states that some of the issues for repair have been addressed and the following are the only repairs/construction that was not completed for their tenancy:

A bedroom ceiling light cover needs to be installed.

One side of a bi-fold closet door needs to be properly attached as it is loose.

The 3 electrical outlets in the main bedroom will not work unless the light switch is on.

The toilet in the main bathroom runs continuously.

The nozzle for the spray hose leaks under the sink in the kitchen.

The new dishwasher has not been installed as agreed upon.

The new microwave still in the box needs to be removed.

Two dimmer switches in the dining room are missing the knobs.

The front door does not close properly.

The Tenant does not have a key to the back door.

All the basement doors need to have the trim installed.

The patio door sticks and will not open properly without the assistance of the Tenants spouse.

The Tenant states that these issues were brought to the attention of the Landlord at the beginning of the tenancy on November 9, 2011. The Landlord disputes this stating that it was approximately near the beginning of December 2011 a month later. The Landlord stated that he agrees with most of the Tenants claims regarding the following:

A ceiling light cover is not needed as the light is functional as is.

The bi-fold closet door is attached and is functional.

The 3 electrical outlets in the bedroom are connected to the light. The house is approximately 40 years old and that outlets in this fashion are normal.

The Landlord disputes that the toilet runs and is working properly as he attended at the beginning of the tenancy and the float just needs to be adjusted.

The Landlord disputes this as he attended the rental twice during the tenancy and could find no water leak. The Landlord states that if the spray nozzle is not properly retracted that some dripping can occur.

The Landlord agrees that a new dishwasher is in the rental, but that there is no agreement to install it.

The Landlord agrees that a new microwave is in the rental, but that the Tenant has refused to allow him in to remove it.

The Landlord states that knobs were installed and in place at the beginning of the tenancy.

The Landlord disputes the Tenants claim by stating that 1 key was provided to the Tenants for the back door.

The Landlord does not dispute that the door trim is uninstalled, but only states that he refuses to install them now.

The Landlord agrees that the patio door sticks, but disputes that it is still functional.

The Tenant has submitted photographs in support of her claim. The Landlord has submitted no evidence.

The Tenant also seeks to reduce rent by \$150.00 per month until the repairs are complete. The Tenant states that the Landlord has left construction material throughout the basement in the rec. room and two shelving areas which contain paint, door trim, the new and still boxed microwave, a roll of carpet underlay and various tools. The Tenant states that they never had the use of a space equal to approximately a 12X12 area. The Landlord disputes this stating that the construction material only takes up a space equal to approximately a 6X6 area. The Tenant has submitted two photographs of this area.

Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the Tenants are responsible as they have 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. Based upon a balance of probabilities, the photographs and the absence of any evidence in support of the following, I find that the Tenant has been unsuccessful in the following:

The ceiling light referred to does not require a light cover. It appears based upon the Tenants photographs to be an adjustable spotlight that already possess a small light cover.

The 3 electrical outlets in the main bedroom requiring the light switch to be on in keeping with the age of a 40 year old home do not require repairs.

The spray nozzle leak for the kitchen sink has not been proven as the Tenant has provided no evidence of a leak and is in dispute by the Landlord in his direct testimony.

Based upon the direct testimony of both parties and on a balance of probabilities, I find that the Landlord is responsible for the repairs having been notified by the Tenant and has chosen not to act. I order the Landlord to perform the following repairs/issues with proper notice to the Tenant as indicated under the Act:

The installation of the complete bi-fold closet doors in the bedroom.

The adjustment of the main toilet to stop the continuous running of water.

The installation of the dishwasher.

The replacement/installation of knobs for the dimmer switches.

The servicing of the front door to ensure the proper function of a primary entrance/exit to the rental.

To provide 1 additional key to the back door.

The proper installation of all of the door trim in the basement of the house.

The servicing of the patio door to ensure the proper functionality of the sliding door.

To complete the installation of the air vent covers in the rental unit.

The Landlord has until April 13, 2012 to complete the repairs listed above.

I also order the Landlord to remove whatever left over construction material and personal property from the rental unit. I find that without an agreement for storage between the two parties that this is a loss of space from the rental and constitutes an inconvenience to the Tenants.

I find that the Tenants have failed to establish a claim for the monetary claim of \$550.00 in compensation for loss. Both parties have failed to provide any evidence of any agreements regarding the completion of repairs/renovations and storage. The area displayed in the Tenants photographs as lost space by both parties is in dispute. The Tenants state that a loss of an area equal to approximately 12X12 is disputed by the Landlord, but the Landlord has indicated a loss of space equal to approximately 6X6. However, the Tenants have suffered an inconvenience for a loss of space and I grant

them a nominal award of \$250.00 consisting of \$50.00 per month from November 2011 to the date of this hearing. As the Tenancy is continuing, I grant the Tenant the right to withhold one-time, \$250.00 from the next months rent (April 2012) in satisfaction of this claim.

As for the Tenant's request for a rent reduction, If the Landlord fails to complete the list of repairs as listed above by April 13, 2012, the Tenant may withhold \$50.00 per month (beginning May 2012) until the repairs are complete. If there is a dispute over the completion of the repairs, the Landlord may make application to the Residential Tenancy Branch to resolve this issue.

The Tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

The Tenant is granted an order for the Landlord to complete repairs by April 13, 2012. The Tenant is granted an order to withhold a one-time amount of \$300.00 from the April 2012 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: March 19, 2012.

Residential Tenancy Branch