



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR and FF

Introduction

This hearing was convened on the tenant's application of March 27, 2012 seeking a monetary award for loss or damage under the legislation or rental agreement, an order for repairs to the rental unit, rent reduction and abatement, and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the tenant is entitled to the monetary compensation and orders requested.

Background, Evidence and Analysis

This tenancy began on May 14, 2011 under a fixed term rental agreement set to end on May 14, 2012. Rent is \$1,500 per month and the landlord holds a security deposit of \$1,500 paid at the beginning of the tenancy.

During the hearing, the tenant gave evidence that the landlord was in the process of renovating the rental building when her family first viewed the property in April 2011. The tenants stated that they would move in at the end of May 2011, but the landlord invited them to take earlier occupancy if they would permit him to complete the work during the tenancy.

The rental unit was initially occupied by nine family members and currently houses eighty, four adults and four children.

The tenant stated that she had brought this application when the landlord had failed to complete all repairs to the rental property as promised, but she agreed that he had

made some progress. The tenant submitted numerous photographs in support of her proposition that the rental unit is in need of major repairs.

The landlord submitted numerous invoices as evidence that he had made substantial repairs to the rental unit.

The tenant submitted a list of repairs still required and sought a rent reduction to \$1,100 per month including rent abatement of \$400 for each month from the beginning of the tenancy.

The tenant also submitted a copy of a letter she had written to the landlord on January 4, 2012 listing the work that needed to be done and asking the landlord to resume repairs and to complete them by February 4, 2012.

The landlord referred to clause 7 of the Rental Agreement which states:

“During the term of the lease, the Tenants shall provide for the necessary repairs and maintenance of the Leasehold Premises. The Landlord shall not provide, nor arrange for any repair or maintenance of the Leasehold Premises, and the landlord shall not be liable to the Tenants, or to any other person, for the costs of any repair or maintenance provided or arranged by the tenants. The Tenants shall promptly notify the Landlord of the need for any repair or maintenance to the Leasehold Premises.”

It was also noted that the tenant had paid the equivalent of one-month's rent as a security deposit which exceeds the one-half month equivalent set by section 19(1) of the *Act*.

The tenant further claims for damage to a computer resulting from a water intrusion into the rental unit, the result of a plugged drain. In addition, the tenant claims \$85 in recompense for replacement of a convection oven with a used one after the one in the rental unit failed and the landlord would not replace it.

Analysis

Section 5 of the *Act* prohibits landlords and tenants from avoiding or contracting out of the *Act* and renders any provision that attempt to do so as unenforceable.

Section 32 of the *Act* requires a landlord to maintain a rental unit in a state of decoration and complies with health, safety and housing standards required by law repair and that having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Accordingly, I find that clause 7 of the rental agreement, previously cited, is of no effect and that the repair of the rental unit must be governed by section 32 of the *Act*.

Therefore, I find that the tenant is entitled to make claim for the incomplete repairs. However, I find that the tenant is entitled to claim for only those repairs listed in the letter to the landlord of January 4, 2012, the first written demand submitted to the landlord.

On examination of the photographs submitted by the tenant, I find that the requested repairs are substantial, including a number of holes in the walls and ceiling, and that the tenant's request for their completion is reasonable.

As permitted under section 65 of the *Act*, I hereby order that the landlord complete the repairs which were listed in the tenant's letter of January 4, 2012 and which were not yet completed at the time of the hearing, including:

- Complete installation of rods and shelves in closets (May have been completed);
- Install baseboards, repair identified holes in walls and ceiling, and cover electrical box;
- Install screening over a large opening in the soffit which has resulted in squirrels getting into the attic;
- Removal of a pile of yard waste.

In view of the delay in completing this work, I find that the tenant is entitled to a rent reduction of \$100 per month, retroactive to January 1, 2012 and continuing until the work is completed.

As to the security deposit over payment, section 19 of the *Act* limits the amount of a security deposit a landlord may require to an amount that is one-half of the monthly rent and provides that a tenant may recover an overpayment by withholding the amount from

rent. In the present matter, the landlord charged \$1,500, a full month's rent. The tenant is therefore permitted by the *Act* to deduct \$750 from the next month's rent.

The tenant claims \$85 spent in replacement of the convection oven. As this item is not included in the written notice to the landlord, I find the tenant made the purchase at her own discretion and must bear the cost.

With respect to the claim for damage to the computer, the tenant advised that she does not carry contents insurance. I heard no evidence that would prove that the water intrusion resulted from negligence on the part of the landlord. Therefore, I must find that by choosing not to carry contents insurance, the tenant has voluntarily assumed the risk of damage to her belongings. This claim is dismissed.

Thus I find in favour of the tenant as follows:

Rent is reduced from \$1,500 per month to \$1,400 per month from January 1, 2012 until the cited deficiencies are corrected.

The tenant may recover the first four months by withholding \$400 from the rent due on May 1, 2012.

The tenant may recover the security deposit overpayment by withholding \$750 from the rent due on May 1, 2012.

As the application has succeeded on its merits, I find that the tenant is entitled to recover the filing fee for this proceeding from the landlord and may do so by withholding \$50 from the rent due on May 1, 2012.

The tenant's rent due for May 2012 is calculated as follows:

Reduced rent due on May 1, 2012	\$1,400.00
Less recovery of security deposit overpayment	- 750.00
Less recovery of the filing fee for this proceeding	- 50.00
Payment required to constitute full rent for May 2012	\$200.00

Conclusion

Rent is reduced from \$1,500 to \$1,400 per month from January 1, 2012 until all specified repairs are completed and the tenant may deduct \$400 from the May 2012 rent to satisfy the first four months of the reduced rent.

The tenant may withhold \$750 from the May 2012 rent to recover overpayment of the security deposit.

The tenant may withhold a further \$50 from the May 2012 rent to recover the filing fee for this proceeding.

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: April 18, 2012.

Residential Tenancy Branch