



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord make regular and emergency repairs to the rental unit; a rent reduction for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

Both parties were present at the hearing and provided affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to compensation in the amount of \$3,400.00?

Must the Landlord be ordered to comply with the Act and make repairs to the rental unit?

Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This tenancy started on October 1, 2011; rent is \$1,700.00 per month, due on the first day of each month; a security deposit in the amount of \$800.00 was paid on September 11, 2011. The rental unit is a house that was built in the 1970s.

The Tenant gave the following testimony:

The Tenant stated that there are a number of issues with respect to required repairs in the rental unit and that he mentioned the issues to the Landlord prior to emailing the Landlord with a list of repairs on March 5, 2012. The list includes the following request for repairs:

- Crack in base of toilet;
- Repair back door screen;
- Mould issues in the back bedroom closet;

- Repair hot tub jets;
- Thermostats do not accurately operate in the back bedroom and living room;
- Address sign fell over in wind storm; and
- Washing machine requires repairs.

In addition to the items listed above, the Tenant testified that the outside lights are not working properly; electrical outlets in the kitchen and garage do not work; and the chimney leaks water into the garage during heavy rains. The Tenant also stated there is a crack in the ceiling of the family room where a wall was removed and that the crack is getting bigger. The Tenant is concerned that the roof is not properly supported.

The Tenant testified that the address sign fell over on January 15, 2012, and was not repaired until April 5, 2012, which he submitted was a safety concern because emergency vehicles would not see his address.

The Tenant testified that the back screen door was repaired on April 19, 2012.

The Tenant stated that there is also mould in the window sills and under the sink. He stated that he has a chronic stuffy nose and a cough, which he believes is a result of toxic mould.

The Tenant testified that he did not have sufficient heat in the back bedroom or living room for more than two months during the winter because the thermostats were not working in those rooms. He stated that he had to light a fire to keep warm.

The Tenant testified that he pays extra rent for the hot tub and that it has been broken for months.

The Tenant stated that he has seen water on the floor in the garage and that he had to move items to ensure they were not water damaged. The Tenant did not recall when he saw the water but believes it was in January and March, 2012.

The Landlord and her agent gave the following testimony:

The Landlord provided the following documentary evidence, including:

- 6 pages of written submissions;
- Copies of e-mails from the Tenant;
- Copy of tenancy agreement;
- Copy of house inspection report, e-mail from house inspector and invoice dated May 14, 2008;
- Copy of invoice with respect to maintenance to the wood stove dated November 16, 2011; and
- Invoices dated March 16, 2011 and March 19, 2011 for "pump, conditioner and UV service" for the well.

The Tenant acknowledged receipt of the Landlord's documentary evidence.

The Landlord acknowledged the Tenant had spoken to her about some of items on his list prior to sending the e-mail about the required repairs, but stated that she did not believe any of them were urgent in nature. She stated that the Tenant did not say that the thermostats were not working at all, only that they were not operating accurately. She stated that the first indication the Landlord had that the thermostats required adjustment was on March 5, 2011 and that her agent attended at the rental unit on March 19, 2012 to look at the Tenant's concerns. She stated that the Tenant did not send an e-mail about the hot tub until March 28, 2011.

The Landlord testified that based on her agent's inspection on March 19, 2011, her agent determined that the washing machine was the top priority. She testified that her agent replaced the washing machine and the dryer on April 1st as well as replaced the thermostat in the back bedroom and installed the repaired screen door. She stated that, after being advised that the thermostat was still not working correctly, her agent returned on April 3 and re-installed the thermostat. The Landlord testified that there are 9 heaters and 8 thermostats in the rental unit and that the Tenant was never without heat.

The Landlord testified that she did not believe the fallen address sign was an emergency situation and that it was fixed on April 5, 2012. The Landlord testified that she hired a handy man to attend to any remaining repairs and notified the Tenant about this on April 9, 2012. The Landlord testified that the sign was blown down again and that on April 14, 2012, her handy man repaired the sign, put new numbers on the garage, fixed the thermostat in the living room, and repaired two boards on the deck.

The Landlord submitted that use of the hot tub is not part of the tenancy agreement and that it was specifically excluded on the agreement as a service or facility. In addition, the Landlord stated that there is a clause in the Addendum to the tenancy agreement that the Tenant was allowed to use the hot tub under conditions that included a condition that if it stopped working the Landlord might fix it at her sole discretion. She stated that she decided to repair it and that the parts required to repair the jets are on order.

The Landlord testified that the small hairline crack in the base of the toilet did not present a safety issue and did not mean that the toilet was in danger of breaking. She stated that there was no leak from the crack and that it had appeared after she removed the toilet, while re-tiling the bathroom three years ago, and setting it back down. She testified that the inner core of the toilet was sound and that the toilet is in good working order.

The Landlord stated that the windows have metal frames which sweat in the cold weather and cause some mould to grow on the sills. She stated that this is normal for a house of this age and that the mould could easily be removed by occasionally wiping it

down. She stated that when her handyman went to view the areas affected by mould, the Tenant had already wiped it off.

The Landlord testified that the house passed a building inspection in 2008 when she purchased it. She stated that the seam in the ceiling is not a crack. She stated that two pieces of drywall were sealed with caulking instead of taped. The Landlord submitted that there were no structural problems identified by the building inspector and that the roof is not compromised.

The Landlord testified that water sometimes enters the chimney in a hard rain because there is no cap on the chimney. The Landlord stated that although there is a small water stain, no significant amount of water has accumulated at the base of the chimney. She submitted that there are no structural concerns with respect to the chimney.

The Landlord testified that she thought the outside lights had been fixed, but will have the handy man go by for another look. She stated that the Tenant was not home when he originally went to repair the lights and therefore he could not try the light switches which are on the inside of the building.

The Landlord testified that she lived in the rental unit for nearly three years prior to the Tenant renting it and that one of the plugs in the kitchen had never worked. She stated that a professional electrician upgraded the rental unit to 200 amp service in 2010, which involved installing a new electric panel. She stated that the electrician did not indicate there were any electrical problems with the rental unit. Furthermore, she submitted that the house also passed a building inspection in 2008 and that the indicated all of the wiring for outlets was satisfactory.

The Landlord stated that she is aware of her responsibility to maintain the rental unit and stated that in addition to the Tenant's concerns she has also recently had the chimney swept and the well serviced.

The Landlord stated that she believed the Tenant was attempting to get a reduction in rent because he was having difficulty paying the rent, not because there were bona fide repair issues. She stated that he was inconvenienced but suffered no loss and therefore was not entitled to a monetary award. The Landlord stated that he was late paying rent for March and April, 2012.

Analysis

With respect to the Tenant's application for compensation, this is his claim for damage or loss under the Act and therefore he has the burden of proof to establish his claim on the civil standard, the balance of probability.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord with respect to his claim. For example, no photographs of mould, cracks in the toilet and ceiling, or water damage in the garage were provided. When questioned, the Tenant was not able to say what the temperature was in the back bedroom or the living room, only that it was cooler than room temperature.

In her written submissions, the Landlord states that she is unable to address the Tenant's monetary claim of \$3,400.00, because of the lack of details or specificity with respect to the basis for this claim.

The Landlord confirmed that there were some repair issues, for example the thermostats, screen door, address sign, washing machine, outside lights and electrical outlets. I accept the Landlord's testimony that these issues have already been addressed or are in the process of being addressed.

I find that the Tenant has not provided sufficient evidence to establish that he has suffered loss that would be equivalent to two month's rent and therefore I dismiss this portion of the Tenant's claim.

The Tenant seeks repair orders for items which have not been addressed by the Landlord:

- Mould in the bathroom, back bedroom and window sills;
- Crack in the ceiling; and
- Crack in the base of the toilet.

The Tenant submitted that the mould is "toxic black mould" and that he is suffering ill health as a result of its presence. The Tenant provided no evidence of this (for example a note from his doctor or photos of the mould). Mould, mildew and fungus exist in many forms, not all of which are dangerous. Some forms are not pleasant to look at, but they can be eliminated by wiping down the surface of the sills or bathtub with a mild bleach solution. Houses built in the 1907s were not built to the same code as today's houses

and condensation on windows is not uncommon during the cooler winter months, which can cause mould or mildew.

Residential Tenancy Branch policy provides that the Landlord is responsible for ensuring that rental units are reasonably suitable for occupation given the nature and location of the property. Section 32(1) of the Act states:

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.
(emphasis added)

The Landlord provided a copy of a home inspection that was performed when she purchased the rental unit. The report indicates no issues with the support of the roof. Based on the report and the lack of documentary evidence from the Tenant, I accept the Landlord's evidence that there are no structural issues with the ceiling.

Likewise, I find that the Tenant has failed to provide sufficient evidence that the crack in the base of the toilet has compromised the safety of the toilet or that it is in danger of breaking. It is not leaking around the base, and it has been cracked for 2 years without breaking.

The Landlord indicated that she hardly noticed the flaw in the ceiling and that the crack in the toilet base was a hairline crack, approximately 3 inches long. The Tenant did not provide photographs of the toilet or the ceiling and therefore I find that he has not provided sufficient evidence to prove that they should be painted or replaced in order to satisfy the "state of decoration" portion of the clause in Section 32 of the Act.

For the reasons stated above, I decline to Order that the Landlord comply with Section 32 of the Act. I also decline to make regular repair Orders. I do not find that there are any emergency repairs currently required to be made.

The Landlord submitted that use of the hot tub was not part of the tenancy agreement and that it was specifically excluded from the tenancy agreement. However, there is an addendum to the tenancy agreement that provides for use of the hot tub. I find that the hot tub is included as a facility under the tenancy agreement. I further find that the Landlord is required under the provisions of Section 32 of the Act to repair and maintain the hot tub. Parties may not contract outside of the Act.

On March 5, 2012, the Tenant first advised the Landlord, by e-mail, that the hot tub jets were not working properly. On March 28, 2012, the Tenant e-mailed the Landlord that

the heat pump would not allow the temperature of the hot tub to rise above 88 degrees Fahrenheit. The parts for the jets are on back order and the thermostat has been fixed.

I find that the Landlord has attended to repairing the repairs that the Tenant has established were required on a timely basis and that none of them were emergency repairs. Therefore, I decline to provide the Tenant a rent reduction.

Section 27 of the Act states:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I caution the Landlord with respect to terminating or restricting the Tenant's use of the hot tub without complying with the provisions of Section 27(2) of the Act.

Conclusion

The Tenant's application 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: April 30, 2012.

Residential Tenancy Branch