



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's application requesting emergency repairs, repairs and an Order allowing the tenant to reduce rent for repairs agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenant's Notice of hearing package and evidence on July 13, 2012. The landlord acknowledged that the evidence package included a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenant on July 12, 2012. The landlord said he understood that the tenant had also applied to cancel this Notice; therefore, I amended the application to include a request to cancel the Notice, as intended by the tenant.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 12, 2012, be cancelled?

Must the landlord be Ordered to make emergency repairs and repairs to the unit?

Is the tenant entitled to rent abatement as the result of repairs that were agreed upon but not completed?

Background and Evidence

This tenancy commenced on June 1, 2012; the tenant moved into the unit on May 31, 2012. Rent is \$550.00 per month, due on the first day of each month. A \$275.00 deposit was paid. A copy of the tenancy agreement, signed on June 1, 2012, was supplied as evidence.

At the start of the hearing the landlord said that he did not want to end the tenancy and only wanted the tenant to pay the rent that is owed for July 2012. The landlord stated that tenant does not have to vacate the unit if she pays the rent. The tenant confirmed that she has yet to pay July rent owed in the sum of \$550.00 as she believes she is entitled to compensation as a result of the landlord's failure to make the repairs.

The tenant submitted that if the landlord had been unable to properly prepare the unit for rental she should not have been allowed to move in 1 day early. The landlord said that he cannot lose rent and that he fully intended to have the repairs completed but his caretaker had become ill, which has caused a delay.

There was no dispute that at the start of the tenancy the landlord had planned to complete a number of repairs to the rental unit. The landlord said that the previous tenant had been evicted and as a result left the unit in very poor condition and that he had caused damage to the unit.

The tenant resides on the ground floor of the building and is concerned that some of the deficiencies place her safety at risk as entry could be gained due the absence of proper locks on a window and apparent rot in the window sills.

The parties agreed that since the start of the tenancy the living room has been painted. A number of other repairs are requested by the tenant, such as:

- Weather stripping on doors and windows, some gaps are 1.5 to 2 inches wide;
- Repair rotten living room window frames;
- Install a proper, secure lock on living room window;
- Replace living room carpet;
- Clean bedroom carpet;
- Repair thermostat;
- Investigate malfunctioning living room light;
- Paint all walls and ceilings, except living room;
- Replace broken kitchen counter tiles and repair grout;
- Tighten kitchen drawer pulls and replace missing pull;
- Repair lower kitchen cupboard;
- Repair bathroom ceiling and walls;
- Investigate moisture in the bathroom vanity, mould is present;
- Investigate the need for bathroom fan to remove moisture as there is no window in the room;

- Check exit doors for strength;
- Install light fixture covers in the hallway and bathroom
- Repair bathroom plug;
- Hallway doors, walls and carpets dirty and not maintained;
- Laundry room lights are not working; and
- Garbage piling up at back of building.

Other items for repair were included in the list given to the landlord on July 2, 2012; those included issues like installation of a chain lock and door peep-holes and a request that the building lawn be cut.

The tenant supplied photographs taken of the rental unit some of which showed:

- old, damaged carpet in the hallways
- belongings that have been dumped behind the building;
- rental unit entry door which is in need of paint;
- gaps under a door;
- the exterior of a window sill which shows signs of apparent rot;
- stained ceilings and walls;
- a cracked bathroom door;
- cracked and broken kitchen counter tiles;
- dirty kitchen tile grout;
- dirty and stained carpets;
- a large crack in the drywall above the living room window;
- cracked door jambs; and
- the general need for painting.

The tenant submitted letters from her mother and sister, both indicating they had helped the tenant move into the unit and how dismayed they were with the condition of the home. They note that the unit was dirty, needed painting, that it had a strong, unpleasant odour and that multiple deficiencies existed.

The landlord confirmed receipt of the tenant's July 2, 2012, written request for repairs and stated that repairs will be completed. The landlord said there have been times when they needed to enter the unit and the tenant was not available.

The tenant believes that the value of the tenancy has been reduced by half, given the landlord's failure to make repairs that were promised and that she should be relieved of the July rent payment in the sum of \$550.00.

Analysis

Based on the agreement of parties during the hearing; the tenant will pay the rent I find is owed for July, 2012, and the Notice to End Tenancy for Unpaid Rent issued on July 12, 2012, is cancelled.

In relation to the request for an Order that the landlord complete repairs I have considered section 33 of the Act, which describes emergency repairs and section 32 of the Act.

Heating systems and matters of health and safety fall within the realm of emergency repairs. Therefore, I Order:

- that no later than August 17, 2012, the landlord investigate and complete repairs so that the tenant's thermostat works and allows the heating system to function in her unit; and
- that the landlord immediately ensures that a proper lock is placed on the living room window, replacing the hook and eye.

The tenant lives on the ground level and there should be proper, functioning door locks and secure window locks. Heat is an essential service and must be available at all times.

Section 32 of the Act provides, in part:

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.

There is no dispute that the landlord had told the tenant the rental unit would be repaired, that the carpets would be replaced and cleaned and that painting could be completed. Given the scope of work needed to bring the unit to a reasonable standard I have made the following Order:

- that no later than August 10, 2012, the landlord provide the tenant with a complete list of all repairs that will be completed;
- that the list of repairs provides the tenant with a schedule of work to be completed;
- that the schedule includes completion of all repairs no later than September 9, 2012;
- that the schedule of repair includes the dates and times of entry needed to carry out the repairs; and that the following items be referenced in the schedule of repairs:
 - old, damaged carpet in the hallways
 - belongings that have been dumped behind the building;
 - rental unit entry door which is in need of paint;
 - gaps under a door;
 - the exterior of a window sill which shows signs of apparent rot;

- stained ceilings and walls;
- a cracked bathroom door;
- cracked and broken kitchen counter tiles;
- dirty kitchen tile grout;
- dirty and stained carpets;
- a large crack in the drywall above the living room window;
- cracked door jambs; and
- the general need for painting.

This schedule assumes that the emergency repairs have been completed. Once all of the repairs are completed I Order the landlord to provide the tenant written notice of completion.

I have Ordered a schedule of repairs be given to the tenant to encourage the landlord to compress the repairs into as few days as possible, in order to minimize any disruption to the tenant.

In relation to the tenants claim for rent abatement, I find that the landlord has failed to meet his responsibilities by ensuring that the rental unit was ready for occupancy and that the repairs, painting and carpet replacement had not been fully addressed. The landlord's caretaker did become ill and the landlord does have to make mortgage payments, but a reasonable response to the damage caused by the previous tenant would have been delayed occupancy so that the unit met the basic requirements of the Act.

I find that the tenant has suffered a nominal loss of value in the sum of \$100.00 for June and July, 2012, as a result of the state of the unit. The tenant must immediately pay the landlord July, 2012 rent in the sum of \$550.00. If July rent in the sum of \$550.00 has been paid prior to receipt of this decision, the tenant may deduct the June and July abatement of \$100.00 from rent owed on August 1, 2012.

In addition, pursuant to section 65 of the Act, I find that the tenant is allowed to make deductions from rent owed September 1, 2012, in the sum of \$1.62 per day for each day in August that all repairs have not yet been completed. For example, if all repairs are completed by August 15, 2012, the tenant can make a \$22.68 deduction from rent owed on September 1, 2012.

The tenant is allowed to make a deduction from rent owed on October 1, 2012, in the sum of \$1.62 per day for each day in September, 2011 that repairs are not fully completed. This rent reduction will continue each month until the repairs are fully completed.

Once the landlord gives the tenant written notice that all repairs have been completed the rent abatement must cease. If a disagreement in relation to repairs continues, the landlord is at liberty to apply requesting an order the abatement end, based on verification of repairs supplied by the landlord.

If repairs are not completed by September 9, 2012, the tenant is at liberty to apply requesting additional compensation.

Some issues raised by the tenant, such as peep-holes for the doors did not fall within the requirements of the Act. I have considered only those repairs and maintenance issues that I find are contemplated by the legislation.

I have appended section 29 of the Act to this decision; which sets out notice required for entry to a rental unit. The tenant does not have to be at home if proper notice of entry, for a reasonable purpose, is given to the tenant.

Conclusion

The Notice to End Tenancy for Unpaid rent issued on July 12, 2012, is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The tenant is entitled to rent abatement in the sum of \$50.00 for each of June and July, 2012 and must immediately pay rent owed for July, 2012. If July rent has been paid in the sum of \$550.00 then the tenant may make the \$100.00 deduction from August, 2012, rent due.

The tenant is entitled to further rent abatement in the sum of \$1.62 per day for each day the repairs are not fully completed, as set out in the analysis portion of this decision.

The landlord must give the tenant a schedule of repairs that includes the items to be repaired, and the dates work will be completed, as Ordered in the analysis section of this decision.

The tenant has leave to reapply for any future additional loss of value of the tenancy beyond September 9, 2012.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 30, 2012.

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).