



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, OLC, MNDC, LRE

Introduction

This was the reconvened hearing dealing with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make emergency repairs and repairs, for an order requiring the landlord to comply with the Act, a monetary order for money owed or compensation for damage or loss and an order suspending or setting conditions on the landlord's right to enter the rental unit.

The hearing on July 25, 2012 was adjourned to allow the tenant time to respond to the landlord's evidence; however, the tenant failed to submit further evidence in response. The Interim Decision of July 25, 2012 should be read in conjunction with this Decision.

Notices for the adjourned hearing were requested to be prepared and sent to both parties along with the Interim Decision of July 25, 2012.

The tenant and his advocate appeared; the landlord and his agent did not appear, despite having appeared at the first hearing on July 25, 2012. The hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present his evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me, including the landlord's prior written submissions, which met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs and emergency repairs?

Is the tenant entitled to an order requiring the landlord to comply with the Act?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Background and Evidence

This month to month tenancy began on or about January 3, 2007, monthly rent is \$595.00 and the tenant paid a security deposit of \$300.00 on or about January 3, 2007.

In addition seeking orders for the landlord, the tenant is seeking a monetary order in the amount of \$5130.00, comprised of \$3570.00 for loss of quiet enjoyment since June 2011, \$1560.00 for reimbursement of cell phone bills, and loss of personal property in the amount of \$400.00. I note that these amounts actually total \$5530.00.

I also note that the tenant has not applied for a reduction in rent, but through his evidence has requested the same.

The rental unit is a single room occupancy in a hotel type setting. The tenant said that this is his primary residence, has been since 2007 and that he does not own any real property, as alleged by the landlord in his written evidence.

The tenant's relevant evidence included a copy of a tenancy agreement and copies of photos of various locations of the rental unit and the residential property.

Repairs and emergency repairs:

The tenant said that garbage is left in the hallways every day, causing a rodent infestation for which the tenant is constantly having to set traps. The tenant said that he has made complaints to the manager many times, with no success.

The tenant said that there is a CO2 and carbon monoxide hazard in the laundry room in that there is a gas dryer, but no extraction fan.

The tenant said that his intercom system has not worked since January 2011, so that he cannot buzz through any guests. The tenant considered the intercom a warning device.

The tenant said that the balconies were rotting to the extent that a complete replacement was required to make them safe as he was not able to sit on the balcony for very long for fear it would fall off.

The tenant also requested an order requiring the landlord to repair the elevator. When questioned, the tenant acknowledged that he lived on the 2nd floor and that he did not use the elevator, but was simply asking this for the benefit of the guests of the property.

Landlord's compliance with the Act, regulation or tenancy agreement:

The tenant said that the landlord has failed to comply with the terms of the tenancy agreement as the landlord is no longer supplying fresh sheets and towels. Additionally the landlord has reduced the cable package offered, formerly having 100 channels and now being given 12 channels.

The tenant said that the landlord terminated the phone/answering service as provided for in the tenancy agreement for at least the last 12 months. The tenant said that he has been forced to buy pre-paid phone cards for his mobile phone due to not having the service as provided for in the tenancy agreement and has requested compensation of \$1560.00 in those mobile phone bills. The tenant said his mobile phone bills have been \$130.00 per month, for the last 12 months.

The tenant also requested that the landlord repair the dryer as it has been broken since May 2012.

Suspending or setting conditions on the landlord's right to enter the rental unit:

The tenant said that the building staff have entered the tenant's room when he is not there and rummaged through his property. The tenant said that he is aware of this as he placed a counter on his door and that in 7 days, his room was entered 9 times.

Further, the tenant said that the three counters he had were stolen and that he should be reimbursed their value of \$400.00.

The tenant also said that he is entitled to compensation for lost property as sewage leaked into his room and some of his belongings were ruined.

Monetary claim:

In addition to the amounts requested above, the tenant said that he is entitled to compensation for the loss of his quiet enjoyment, in the amount of \$3570.00. In support, the tenant said that at least every 3rd to 4th night, there are loud disturbances outside his door. The tenant said he is entitled to compensation equal to ½ of the monthly rent for the last 12 months.

When questioned, the tenant said he has complained over and over again to the landlord, but the noise has continued unabated. The tenant confirmed he had not issued written notices to the landlord.

Although the landlord did not appear at the reconvened hearing, I have reviewed the landlord's evidence.

The landlord denied that the tenancy agreement was valid, stating that upon questioning personnel at the Residential Tenancy Branch ("RTB"), he was informed that

RTB forms always have a reference number contained in the form. The landlord stated that this tenancy agreement did not and that it appeared to have been altered.

The landlord said that the tenant prevented repair personnel from repairing the toilet and that the tenants of the residential property have created the rodent infestation due to leaving open food containers about the premises. To correct the problem, according to the landlord, the landlord has now started conducting monthly room inspections to promote a healthy and safe living condition.

The landlord denied that his staff entered the tenant's rental unit, with the exception of a safety concern about the tenant's electrical system. The landlord was concerned as the breakers kept tripping and when the tenant failed to respond to the landlord's knocks on the door, the rental unit was entered and the discovery was made that all the tenant's electrical appliances were on to the fullest, including the heater and air conditioner.

As to the noise from the laundry, the tenant has relocated to another room and is not disturbed by any noise. As to the noise complaints, the landlord said that management of the residential property has recently changed and the activity at the hotel has been changed "dramatically." However, according to the landlord, they were not made aware of any specific noise complaints by the tenant.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Monetary claim:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In this case before me, I find the tenant submitted insufficient evidence that the landlord failed to provide the tenant with his right to quiet enjoyment. In reaching this conclusion, I find it reasonable that a landlord would be put on notice by the tenant that his rights are being breached. Proof of such notice could be substantiated in written form, of

which here there is none. As there are no written notices by the tenant to the landlord, I therefore cannot conclude that the landlord was sufficiently notified. I therefore find the tenant submitted insufficient evidence to support his claim for \$3750.00 for loss of quiet enjoyment.

As to the tenant's claim for reimbursement of mobile phone bills, the tenant failed to meet the third step in his burden of proof as he failed to provide receipts or proof of payments. I therefore find the tenant submitted insufficient evidence to support his claim for \$1560.00.

I also had no evidence that the tenant had 3 counters stolen or the value of the counters. I therefore find the tenant submitted insufficient evidence to support his claim for \$400.00.

Due to the above, I dismiss the tenant's monetary claim for \$5130.00, without leave to reapply.

Repairs and emergency repairs:

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

Section 33 requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

On a balance of probabilities, I find the tenant has established that there is a rodent infestation in the residential property and his rental unit. There is, however, no proof of how long the tenant has suffered this infestation and therefore I will not grant a retroactive reduction in rent.

I accept that the landlord has taken some steps in remedying the rodent infestation, but I find that these steps have resulted in insufficient action necessary to rid the rental unit of rodents. I find this insufficient response has caused the tenant to suffer a loss of use and enjoyment of his rental unit. I accept that the rodent infestation will diminish the value of the tenancy by \$25.00 per month until the rodent infestation has been eradicated.

I direct the landlord to hire a licensed, professional pest control company, no later than August 31, 2012, to correct the rodent infestation and to issue a written report when the process has been completed and that the rental unit is free from rodents.

Until the completion of the extermination, I grant the tenant a continuing rent abatement of \$25.00 per month and I further authorize the tenant to reduce future monthly rent

payable by \$25.00 until such time as the licensed, professional company has issued its final report certifying that the process of extermination of the rodents is complete.

Upon receipt of the written report verifying completion of the extermination of the rodents, the tenant will be obligated to resume payment of the full monthly rent starting the month following receipt of the written report. Example: if the landlord supplies the report on September 3, 2012, the tenant's rent for September is reduced by \$25.00, but the tenant would have to pay the full amount of rent payable for October 2012.

If the tenant is not satisfied with the extermination being complete and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that it has complied with this Decision.

I find the tenant has submitted insufficient evidence of a CO2 and carbon monoxide hazard in the laundry room or that the balconies are required to be repaired and I therefore dismiss his request for an order for those repairs.

As to the elevator, the tenant confirmed that he does not use the elevator and that he was asking for the repair for other guests. I therefore dismiss his request for a repair to the elevator.

Landlord's compliance with the Act, regulation or tenancy agreement:

The tenancy agreement provides the tenant with free laundry service, sheets and towels service and a phone/answering service and I find the tenant has proven that he has been deprived of these services. I therefore order the landlord to immediately repair the dryer to working condition, to provide the tenant with his sheets and towels service and to restore the phone/answering service, effective no later than August 31, 2012.

In the event the landlord fails to restore or provide these services by August 31, 2012, the tenant is authorized to reduce his rent by \$50.00 per month, beginning September 1, 2012, until such time as the landlord has completed the repairs or restoration.

If the tenant is not satisfied with the repairs or restoration being complete and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that it has complied with this Decision.

I find the landlord is not required to provide the tenant with anything other than basic cablevision and that the landlord is providing such service. I therefore dismiss his request to have restored an enhanced cable package.

Suspending or setting conditions on the landlord's right to enter the rental unit:

I find the tenant submitted insufficient evidence that the landlord has entered the room unlawfully and I therefore dismiss his request for such order.

I remind the landlord to comply with Section 29 of the Act, and give the tenant at least 24 hours written notice that includes the purpose of entering, which must be reasonable and the date and the time of the entry, which must be between 8:00 a.m. and 9:00 p.m.

Conclusion

For the reasons above, the tenant's monetary claim for \$5130.00 is dismissed, without leave to reapply.

The tenant is granted a reduction in rent of \$25.00 per month beginning September 1, 2012 until the landlord has sufficiently proven that the rodent extermination has been completed.

The tenant is granted a reduction in rent of \$50.00 beginning September 1, 2012, in the event the landlord fail to repair the dryer to working condition, to provide the tenant with his sheets and towels service and to restore the phone/answering service, effective no later than August 31, 2012.

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: August 14, 2012.

Residential Tenancy Branch