



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, ERP, RP, PSF, PRE, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for the cost of emergency repairs, that the landlord make emergency repairs and repairs, that the landlord provide services and facilities required by law, that conditions be placed on the landlord's entry to the unit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant submitted a CD as evidence; the landlord was unable to view the CD. My attempt to view the CD was unsuccessful; therefore the evidence was not considered. Residential Tenancy Branch Rules of Procedure does not contemplate this type of evidence and in the absence of a method of viewing; the CD evidence was set aside.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$1,000.00 for emergency repair costs?

Must the landlord be Ordered to make an emergency repair to the tenant's entry door?

Must the landlord be Ordered to make repair to the roof and the shower?

Must conditions be placed on the landlord's right to enter the unit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on January 1, 2012; rent is \$1,000.00 per month due on the first day of each month. There is currently a dispute in relation to rent owed; however the tenant confirmed she had not applied to dispute a notice ending tenancy.

The tenant lives in a house that contains several suites. Access to the tenant's unit is at the top of a set of stairs, where a sliding door enters her unit. The parties agreed that the sliding door has not been able to be locked since January, 2012.

The landlord confirmed that the tenant's sliding entry door must be replaced and that a new one has been manufactured and should be installed within the week. The landlord acknowledged that it has taken too long to have the door repaired.

The landlord acknowledged the leak that has been discovered on the roof. A roofing company has recently inspected the roof and determined that it must be replaced. The home owner now has the estimate and the work will be completed.

The tenant has a claw-foot bathtub and would like to have the shower function repaired. It has not worked since she moved into the unit. She is able to bathe, but would like the use of the shower head.

The landlord plans on repairing the shower head, but said it is older and was not in working order at the start of the tenancy. Attempts will be made to repair the hand-held shower within the next few months.

The tenant supplied a number of dates that she alleges the landlord has entered the property and her suite. The tenant alleged that the landlord is entering the home without any notice. This makes the tenant feel threatened as she does not have a lock on her door. The tenant wants restrictions placed on the landlord's right to enter the home. The tenant said the last entry was on July 14, 2012, when the landlord was on

the front lawn of the home. On July 1, 2012, the landlord entered the home and then knocked on her door.

The landlord said that on July 14, 2012 the tenant accused the landlord of illegal entry and called the police. The landlord entered the home and went through to the back door, where he accesses his hose. The landlord stated that he has a right to enter this portion of the home.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of evidence that the tenant has made the emergency repair required to her door, I find that the monetary claim in the sum of \$1,000.00 is dismissed. There was no evidence before me that the tenant took the steps required in accordance with section 33 of the Act and she has not made the repair or incurred a cost.

The lack of a lock on the entry to the tenant's unit is, as defined in section 33 of the Act, an emergency repair. This door has not been able to be locked since January 2012 and constitutes an unnecessary threat to the tenant's feeling of security. The landlord has confirmed that the door will be replaced within the week. Pursuant to section 62(3) of the Act I Order the landlord to immediately repair the door to the tenant's unit so that it has a working lock. Until such time as the door is repaired the landlord is Ordered to install an interior chain lock, so that the tenant may secure the unit from inside, when she is at home.

If the door is not repaired and the lock is not functioning by August 10, 2012, the tenant is at liberty to submit a claim for rent abatement for each day that the door remains unrepaired. The tenant will also be at liberty to make the repair and deduct the cost from rent owed, as provided by section 33 of the Act.

Maintenance of a roof can lead to major leaks, which are considered an emergency repair. There is no evidence before me that a major leak exists, however, there is

agreement that the roof is beyond its useful lifespan and must be replaced. Therefore, I find, pursuant to section 62(3) of the Act, that the landlord replace the roof no later than November 30, 2012.

There was no evidence before me that the hand-held shower is a facility required by law. The tenant has use of the bathtub and is able to bathe. The landlord intends to repair that unit, but I decline to Order him to do so.

It appears that the tenant believes that the landlord's entry into common area of the home is a breach of section 29 of the Act, which provides:

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).

As the tenant resides in a multi-suite building the landlord is, not unreasonably, responsible for maintenance of the common areas, which would include the interior access points of the house and other common areas of the property. The entry and hallways, outside of the units in the home, are common areas and the landlord cannot be prevented from accessing those areas. Unless the parties mutually agree or proper

notice is given, the landlord may not enter past the tenant's sliding door which is at the top of the stairs.

The landlord has been ordered to install a chain lock on the interior of the tenant's door and to repair the door and lock no later than August 10, 2012. I do not find that an Order is required to restrict the landlord's access to the tenant's unit; he must give proper notice of entry, but may not be thwarted from entering the common areas of the property or home.

I find that the tenant's application has some merit and that she is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution. The Fee may be deducted from the next month's rent owed.

Conclusion

The monetary claim is dismissed.

The landlord has been ordered to repair the tenant's door and the roof of the building.

The request for repair of the shower is dismissed.

Access to the tenant's rental unit must be obtained in accordance with section 29 of the Act.

The tenant may deduct the \$50.00 filing fee from the next month's rent owed.

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 03, 2012.

Residential Tenancy Branch