



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make 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 for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, to an order requiring the landlord to comply with the Act, an order requiring the landlord to make repairs, and to recover the filing fee?

Background and Evidence

This tenancy began on September 1, 1999, monthly rent began at \$550.00, is currently \$749.00 and the tenant paid a security deposit of \$275.00 at the beginning of the tenancy. The parties agreed that the tenant's monthly rent will be increased to \$781.00 beginning December 2012.

The tenant's monetary claim is \$1026.13, which she submitted was the cost of two sets of washers and dryers. Additionally the tenant claims that the landlord has failed to

repair and maintain the interior and exterior of the property and rental unit, as required under the Act.

The tenant's relevant evidence included a copy of the tenancy agreement, photos of her current washer and dryer, a receipt for her newest washer and dryer, and photographs of the interior and exterior of the rental unit and property.

Tenant's oral evidence in support of her application-The tenant said that the original washer and dryer broke 4 months into the tenancy, but that she did not notify the landlord due to the clause in the tenancy agreement. The referenced clause is a handwritten addendum which states "Washer & dryer/operations & repairs at Tenants Expense."

The tenant said the replacement washer and dryer was used and eventually broke down, which led to the purchase of a new washer and dryer in 2010.

As to the state of the rental unit, the tenant expressed frustration at constantly having to notify the landlord of repair requests as the landlord never attended to regular maintenance. The tenant said the landlord increases her rent every year, yet provides no maintenance.

The tenant said that the shed roof was replaced in 2003, but is in need of repair now. As well, the tenant said the railing has eroded and is unsafe.

The tenant also said that the refrigerator has no crisper, and is not in good condition, the stove has non-fitting burners, the air conditioner has never been serviced, the gate latch does not work properly, the home and property need repainting, the back door eaves is in a state of disrepair, the back door drain pipe is damaged, the windows have many issues, some rooms are not finished, and floor tile has become yellow, among many other issues.

The tenant said that in general she has always asked for numerous repairs and the requests have been ignored by the landlord.

The tenant said that she has not been provided a telephone number for after hours emergencies.

When questioned, the tenant acknowledged that she had not issued written notices or requests to the landlord regarding any issues listed in her application.

Landlord's testimony in response to the tenant's application-The landlord said that they were not notified of the stove burners, but agreed that they needed replacing.

As to the other issues, the landlord said they have not been notified of the issues complained of by the tenant in her application. However, the landlord said that the landlord has addressed all repair requests made by the tenant over the years, and

pointed to their evidence, which is a series of work orders for the prior 12 months showing multiple attendances to the rental unit as well as time sheets for attendances for repair at the rental unit since the beginning of the tenancy.

The landlord said they did not know of any outstanding repair requests and that the landlord responded any time they were aware of a request.

The landlord said that it was the owner's intent not to be responsible for the repair of the washer and dryer as they were not in good condition at the start of the tenancy, and that the tenant agreed to the same by her consent on the tenancy agreement. Despite this, the landlord was not notified of their breaking down when one of their repair technicians could take a look at the machines, according to the landlord.

The landlord said they did not know of the condition of the refrigerator until seeing the tenant's evidence.

The landlord denied the stairs were unsafe as he has attended the rental unit many times and walked the steps. The landlord contends that the state of the rental unit is in keeping with the age and character of the building and surrounding area. The rental unit was built in the late 1960's to early 1970's, according to the landlord.

The landlord's relevant evidence included the work orders for the past 12 months, time sheets showing attendances to the rental unit since the beginning of the tenancy, costs expended for the past year on the rental unit totalling \$3016.37, photos of the exterior of the rental unit and the initial condition inspection report.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, 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 reasonable measures to mitigate their loss.

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

Washer/Dryer replacement-As to the tenant's request to be reimbursed for her purchase of a washer and dryer, I find the landlord is not responsible to pay the tenant her costs. As to the estimated costs of \$300.00 for the original used washer and dryer said to be

purchased by the tenant, the tenant supplied no proof and therefore failed to meet the third step of her burden of proof.

The tenant supplied a receipt for a washer and dryer purchased in 2010; however the tenant made the decision to purchase the washer and dryer without addressing her repair issue with the landlord. I find I do not have authority under the Act to compensate the tenant for her choices.

Additionally, the tenant failed to notify the landlord of this purchase at the time of occurrence and since that time, until the filing of her application, and I therefore find that she failed to take reasonable steps to mitigate her loss.

Having said that, however, I find the landlord is responsible for the loss of use of a washer and dryer as provided for in the tenancy agreement. Residential Tenancy Branch Policy Guideline #1 states that a tenant cannot be required as a condition of tenancy to repair appliances provided by the landlord as that is the responsibility of the landlord.

I find the handwritten addendum in the tenancy agreement requiring the tenant to repair the appliances to be unenforceable and I therefore find that the tenant is entitled to a reduction in rent for the loss of their use.

Residential Tenancy Branch Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed."

In considering the amount for which the tenant should be compensated, I find a reasonable amount for a loss of the appliances as granted in the tenancy agreement to be \$60.00 per month.

In considering when the reduction in rent should commence, I find the tenant failed to issue a written notice to the landlord of the loss of the washer and dryer until the service of her application and therefore her reduction should commence in October 2012.

As such, I find that the tenant is entitled to compensation of \$120.00 for the reduced rent for October and November of \$60.00 each month.

I also order that the tenant's rent is reduced by \$60.00 per month, beginning December 2012 and thereafter until the washer and dryer have been restored for the tenant's use.

I also order the tenant to further reduce her monthly rent payment for December by \$120.00 for the reduction in rent for October and November 2012. For clarity, the tenant will deduct \$180.00 from the December rent of \$781.00 in satisfaction of her rent reduction for October, November and December, and thereafter the tenant will deduct

\$60.00 per month until the landlord has restored the washer and dryer in working order for the tenant's use.

Should there be a dispute as to when this occurs or if an issue remains as to the functionality of the washer and dryer, the landlord is directed to file an application for dispute resolution to receive an order from another Dispute Resolution Officer ("DRO") allowing the rent to return to the original amount.

Stove burner replacement-I order that the landlord immediately furnish the tenant properly fitting stove burners. In the event the burners are not replaced by December 1, 2012, the tenant is authorized to further reduce her rent by \$10.00 per month until the burners have been replaced.

Remaining request for repairs-As to the tenant's remaining claim regarding the state of the rental unit, the landlord is required under section 32 of the Residential Tenancy Act to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation. Residential Tenancy Branch Policy Guideline #1 requires the landlord to paint the rental unit at reasonable intervals and provide other upkeep and maintenance.

However, in the case before me, the tenant has presented an unusually high number of issues, none of which have been presented to the landlord in written form, as acknowledged by the tenant, in order that the landlord may properly assess a response.

Additionally, I cannot determine from the tenant's application to which items the tenant is requesting repair and to which item the tenant is requesting maintenance or if the landlord is non-compliant with their requirements under the Act.

Under section 59(5)(a) of the *Act*, an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

In the case before me, I find the tenant's application for dispute resolution did not provide sufficient particulars of her request that the landlord comply with the Act or make repairs to the rental unit, other than as specifically directed above.

I find that proceeding with the tenant's request for an order requiring the landlord to make repairs would be prejudicial to the landlord, as the absence of particulars makes it difficult, if not impossible, for the landlord to adequately prepare a response to the claim.

I find the tenant's application contained some merit and I allow her recovery of the filing fee of \$50.00.

In reviewing the tenancy agreement, I did not find a telephone number for the tenant to use as a contact for emergency repairs as required under section 33 of the Act. I direct the landlord to immediately provide the tenant with such number.

Conclusion

The tenant is granted a reduction in rent of \$60.00 for the loss of use of the washer and dryer, retroactively beginning in October 2012. The tenant is directed to withhold the amount of \$60.00 each for October and November, for a total of \$120.00, from the December monthly rent payment.

The tenant is granted a future reduction in rent of \$60.00 per month until the landlord has restored a washer and dryer in working order, beginning in December 2012.

The tenant is allowed to further reduce her rent by \$10.00 per month, beginning in December 2012, in the event the landlord does not provide properly fitting stove burners.

The tenant is directed to satisfy reimbursement of the filing fee of \$50.00 by reducing a future month's rent payment by this amount.

I refuse and therefore decline to consider the remaining portion of the tenant's application that the landlord comply with the Act or make repairs to the rental unit due to insufficient particulars.

The tenant is granted leave to reapply on her request that the landlord comply with the Act or make repairs to the rental unit.

I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

The landlord is directed to provide the tenant with a telephone number to contact for emergency repairs.

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* and is being mailed to both the applicant and the respondent.

Dated: November 09, 2012.

Residential Tenancy Branch