Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act*), regulation or tenancy agreement; an order to complete repairs and emergency repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

The tenant testified at the outset of the hearing that all repairs and emergency repairs are complete and that she is currently only seeking compensation for the length of time it took the landlord to make the repairs. As such, I amend the tenant's Application to include only the request of a monetary order.

In addition the tenant clarified that she had determined the amount of compensation she sought was based on a reduced value of the tenancy in the amount of $330.00 per month for the period of 9 months since the start of the tenancy for a total compensation of $2,970.00.

The tenant testified that she based the amount of the reduced value of the tenancy on the difference between the rent at this rental unit and the rent at their previous rental unit (with the same landlord) as the landlord never should have let her move into this unit until this work was completed.

As this amount is less than the amount of $5,000.00 stated on her Application I find no prejudice to the landlord to reduce the amount of the claim and amend the Application to seek a monetary order in the amount of $2,970.00.

Also at the outset of the hearing the landlord noted that he had not received any evidence from the tenant. The tenant testified that she had been told by an Information Officer at the Residential Tenancy Branch that because all of her evidence was email communication she did not have to serve the landlord with any additional copies. The

tenant also testified that she served both agents for the landlord with her 66 photographs by email.

I have reviewed the tenant's evidence and with some minor exceptions the majority of documentary evidence is in the form of emails between the two parties that are the same as those provided by the landlord, as such I have considered those emails.

In regard to the remaining documents submitted I find that they have limited or little value to the tenant's financial claim as they either confirm a need for repairs that the landlord have been completed or to issues identified by the landlord after an inspection of the rental unit that is not a part of the tenant's financial claim. As such, I have not considered these documents in this decision.

And finally, as to the photographs served to the landlord via email, I note that Sections 88 and 89 of the *Act* stipulate how documents must be served on parties to a tenancy agreement and to a dispute proceeding. Neither section allows for any document to be served via email but does allow service in person; by mail or registered mail; by leaving it in mailbox or attached to a door where the landlord conducts business; or by fax to a fax number provided to the other party as an address of service.

As the tenant testified the photographs were served by email, I find the tenant did not serve the photographs in accordance with the Act and therefore, I have not considered them in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for reduction in the value of the tenancy, pursuant to Sections 28, 32, 33, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on March 28, 2012 for a 1 year fixed term tenancy beginning on April 1, 2012 for a monthly rent of $1,250.00 due on the 1st of each month with a security deposit of $625.00 paid.

The tenant submitted that the landlord was aware prior to the start of the tenancy that there was a racoon problem in the crawl space under the rental unit and that as a result of feces and other garbage in the crawl space the tenants could not use the furnace in the rental unit. There is no mention of either any problems with the crawl space or

odour problems in the Condition Inspection Report dated and signed by the tenant and the landlord April 1, 2012.

The tenant submitted the duct work from the furnace to the vents inside the rental unit was disconnected in many spots and as a result the smell of the feces and garbage was overwhelming, so they sealed the vents as soon as they moved in.

The tenant testified that the landlord was aware of this problem because the handyman who completed the painting of the unit between January and April 2012 told them that he could not turn the furnace on while he was painting.

The landlord testified that, in fact, the furnace was running while the painting was completed or the paint would not have dried properly. The landlord also submitted into evidence a receipt confirming the furnace had been relit on January 18, 2012.

The tenant testified that she also informed the landlord verbally of the odour problem within the first couple of weeks of the start of the tenancy after relatives had tried to stay with them but could not because of the smell. The tenant testified that the landlord is lying when he states that they did not report the odour problem in April 2012.

The landlord testified the tenant had not reported any odour problems but that in May 2012 she had reported a racoon problem. The landlord testified they hired an exterminator to trap, remove, relocated and prevent further racoon infestations. The landlord has provided copies of the invoices and reports from the exterminator for work completed between May 22, 2012 and June 15, 2012. There is no mention in any of the reports indicating an odour or feces problem.

The landlord contends he was not made aware of any odour or furnace problems until the tenant sent an email in late August 2012, at which time they immediately tried to secure contractors to come to investigate the work required and dispute dealing with several contractors it was difficult for the landlord to find one who was willing to complete any of the required work.

The landlord submitted that they received the tenant's request on August 28, 2012 and that on September 4, 2012 an email was sent to the tenant advising the landlord and a restoration company person would attend the unit that week to investigate. The landlord submitted that despite the problems of securing a contractor the area under the deck was cleaned by October 26, 2012.

The landlord had one of the restoration companies provide the tenants with portable heaters at this time because the restoration company had declined to provide with cleaning under the house and completing the duct work.

By mid November the landlord had hired his original handyman to remove the feces and the removal was completed by November 24, 2012, despite a shut down at the request of the tenant. The landlord also states the tenant did not allow the handyman access to water or electricity to complete this work. The tenant testified that the handyman is a liar and that she had not prevented him from using power or water.

The landlord submitted the necessary duct work under the rental unit was completed by November 28, 2012 and that the handyman required access to the interior to complete securing the vents and sealing them but access was denied by the tenants as they had not received 24 hour notice; the tenants allowed access the next day and duct repairs were completed.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair 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.

Despite the tenant's assertion that the landlord was aware of the racoon infestation and feces problem or the duct work problems prior to the start of the tenancy the only evidence she has presented is that she was informed by the handyman who she later insisted was a liar. As such, I find the tenant has failed to provide sufficient evidence that the landlord was aware of any such problems prior to the start of the tenancy.

When the parties to a dispute provide testimony that is contradictory to each other's testimony the burden is on the party making the financial claim to provide sufficient evidence to corroborate their position and/or testimony.

As the landlord disputes the tenant advised him of any odour problems in April or May 2012 and the tenant offers no evidence that would corroborate her assertions that she complained to the landlord about the odour problems prior to August 2012 I find the tenant has failed to establish she had informed the landlord of these problems prior to the August 28, 2012 email.

From the evidence provided by the landlord including the emails between the parties, I find the landlord took reasonable steps to address the issues immediately and that it was a result of not being able to find a contractor to accept the work that the landlord was impeded in completing the work in a timely manner.

I also find that when the landlord determined it would take longer than anticipated to complete the duct work he arranged for an alternate heat source to be provided to the tenants.

Section 28 of the *Act* states 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 Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous exposure to racoon feces being circulated throughout the rental unit would deteriorate occupant comfort and in the long term the condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

As such, I find the tenants are entitled to compensation for a loss of quiet enjoyment of the rental unit. However, as I have found the landlord was not informed the landlord

until August 28, 2012 of these problems I find the tenant is entitled to compensation moving forward from that date.

As to the valuation of the compensation, I find the tenant's position of the rent differential between their previous tenancy and the current tenancy was based, at least in part, on her position that the landlord was aware of the problem prior to the tenancy. As I have found the tenant has not established this fact then I find I cannot use that differential as a guideline to determine the value of the compensation.

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".

Based on my findings above I find the length of time to be considered is 3 months September to November 2012) and based on the fact that the landlord had provided an alternate source of heat for the tenants to use during these repairs and the tenants have never had to leave the rental unit and could use the rental unit during the entire time, I find the tenants are entitled to compensation in the amount of $50.00 per month.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$150.00**. I order the tenant is entitled to deduct this amount from a future rent payment in satisfaction of this claim in accordance with Section 72(2)(a).

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: December 07, 2012.

Residential Tenancy Branch