



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, PSF, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions.

Issue(s) to be Decided

Is there a need for an Order requiring the Landlord to make repairs to the rental unit or to provide the Tenant with services/facilities; is the Tenant entitled to compensation for breaching the Tenant's right to the quiet enjoyment of the rental unit; and is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2009 and that the Tenant currently pays monthly rent in the amount of \$2,250.00.

The Tenant withdrew the application to repair a light fixture, electrical outlets, leaking faucets, and the garage door, as those repairs were made in November of 2012.

The Tenant is seeking an Order requiring the Landlord to repair the frame around the garage door and around a passage door leading into the garage. The Tenant contends that the frame around the garage door is rotting and needs to be replaced. The Agent for the Landlord stated that she does not believe the door frame needs to be replaced and the person who recently repaired the garage door did not inform her that the frame needs to be replaced. The Tenant contends that the door frame around the passage door has recently been repaired but that it does not lock properly. The Landlord stated

that the door frame has been recently repaired and she believes it is in good working order. The Tenant submitted no photographs of either door frame.

The Tenant is seeking an Order requiring the Landlord to repair the awnings that the Tenant contends are in poor condition. The Agent for the Landlord stated that the Tenant is actually referring to a decorative trim that she refers to as fascia boards. The Tenant acknowledged that the Landlord has not previously promised to repair the fascia boards/awnings. At the hearing the Agent for the Landlord committed to repairing the fascia boards in the spring of 2013.

The Tenant is seeking an Order requiring the Landlord to strip and repaint the front door to the rental unit. The Tenant acknowledged that the Landlord has not previously promised to repaint the door but contends it is needed. At the hearing the Agent for the Landlord committed to repainting the door in the spring of 2013.

The Tenant is seeking an Order requiring the Landlord to repaint the door to the rear bedroom. The Tenant stated that the person inspecting the rental unit told them he would inform the Landlord the door should be repainted. The Landlord stated that the inspector did tell her that the door could be "freshened up" but she does not know if repainting is necessary at this time.

The Tenant is seeking an Order requiring the Landlord to repair interlocking brick at the front of the house, which the Tenant contends is a tripping hazard because it is uneven. The female Tenant stated that the individual who inspected the house told her the surface was dangerous. The Agent for the Landlord stated that she has not been informed of a problem with the interlocking bricks and she does not believe they need to be repaired.

The Tenant is seeking an Order requiring the Landlord to allow them to have a second pet and restricting the Landlord from requiring the Tenant to pay a second pet damage deposit. The Tenant acknowledged that they have not asked for permission to have a second pet. The Agent for the Landlord stated that the Landlord is now willing to permit the Tenant to have a second pet, and that permission to have a second pet would likely have been granted if a request had been made. The Tenant acknowledged that the Landlord has not attempted to collect a second pet damage deposit and the Agent for the Landlord stated that the Landlord does not intend to collect a second pet damage deposit.

The Tenant is seeking an Order requiring the Landlord to stop asking for copies of insurance documents and a business license for a day care being operated in the rental unit. The Tenant has advised the Landlord that these items can be viewed and the Tenant does not believe the Landlord is not entitled to copies of those documents. The Agent for the Landlord stated that copies of these documents are required for the purposes of insuring the residential complex. At the hearing the male Tenant initially stated that the Tenant would be willing to provide copies of these documents directly to the Landlord's insurance company if the Landlord provided proof that the insurance

company needed copies of the documents. The male Tenant later stated that the documents would not be provided until repairs were made to the rental unit.

The Tenant is seeking compensation, in the amount of \$5,000.00, for a breach of their right to the quiet enjoyment of the rental unit. The Tenant contends that their right to the quiet enjoyment of the rental unit has been breached, in part, because of email communications from the Landlord, which the Tenant characterizes as harassing.

The Tenant contends that the Landlord has treated the Tenant in a demeaning and belittling manner, which is also a breach of the Tenant's right to the quiet enjoyment of the rental unit. The female Tenant stated that the Landlord has told her the kitchen was dirty and that she provides "whimsical answers" to the Tenant's questions.

The Agent for the Landlord stated that she does not treat the Tenant disrespectfully and that she attempts to arrange repairs when they are requested. She attributes part of the conflict in this tenancy to the numerous repairs being requested by the Tenant and by the Tenant's refusal to comply with her direction to provide all the requests for repair in writing.

The Tenant contends that they are entitled to compensation, in part, because the Landlord did not comply with their requests for repairs in a timely manner. The Tenant submitted an email, dated December 02, 2010, in which the Tenant informed the Landlord of the need for the following repairs:

- Light above the fireplace is not working
- Garage door frame is rotting and not functional
- Awnings around the house are falling apart
- Front and back door requires stripping (and painting)
- Washing machine is smoking
- Kitchen drawers are cracked.

The Tenant submitted an email from the Landlord, dated January 21, 2011, in which the Landlord informed the Tenant the washer has been repaired.

The Tenant submitted an email to the Landlord, dated July 02, 2012, in which the Tenant reported that the garage door is "broken" and that the garage door sensor was never installed. The Tenant submitted an email from the Landlord, dated July 04, 2012, in which the Landlord indicated that she will be unable to inspect the door until the following Saturday. The Tenant submitted an email to the Landlord, dated July 04, 2012, in which the Tenant reported that the garage door could not be properly secured. The Tenant submitted an email from the Landlord, dated July 23, 2012, in which the Landlord indicated that she is making arrangements to have the door repaired. The Tenant submitted an email to the Landlord, dated October 02, 2012, in which the Tenant reported that the garage door has still not been repaired. The parties agree that the garage door was repaired in November of 2012.

Analysis

There is a general legal principle that places the burden of proving a fact on the person who is making a claim, not on the person who is denying the damage. In these circumstances, the burden of proving that repairs are needed rests with the Tenant and I find that the Tenant has submitted insufficient evidence to show that the door frame(s) around doors in the garage need repair, that the door to the rear bedroom needs painting, and that the interlocking bricks need repair. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as photographs, that corroborates the Tenant's testimony that the repairs are needed and that refutes the Agent for the Landlord's testimony that the repairs are not needed. In these circumstances, I find that photographs or similar evidence are necessary to determine the current state of repair of these areas. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair the door frames, to repaint the rear bedroom door, or to repair interlocking bricks.

As the Landlord agreed, at the hearing, to repair the fascia board on the exterior of the house and to repaint the front door by the Spring of 2013, I find that the Landlord is now obligated to make those repairs, pursuant to section 62(3) of the Act. I therefore Order the Landlord to repair the fascia board and repaint the front door prior to June 30, 2013. In the event that the repairs are not completed by June 30, 2013, I authorize the Tenant to reduce the monthly rent by \$25.00, effective July 01, 2013, and to continue to reduce the monthly rent by that amount until the repairs are complete.

As the Agent for the Landlord has now granted the Tenant permission to have a second pet and there is no indication the Landlord intends to collect a second pet damage deposit, I find that it is not necessary for me to issue an Order in regards to pets in the rental unit.

In an attempt to protect the Tenant's right to the quiet enjoyment of the rental unit, I Order the Landlord to refrain from asking the Tenant for any insurance documents and any documents related to the daycare business being operated in the home until such time as the Landlord has a written request to produce specific documents related to the tenancy/business from the Landlord's insurer, and the Landlord has provided that written request to the Tenant. Once the written request has been provided to the Tenant, I find that the Landlord has the right to communicate with the Tenant regarding that request until such time as the Tenant documents required by the Landlord's insurer.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord has harassed the Tenant via email. In reaching this conclusion, I was heavily influenced by the emails submitted in evidence by the Tenant. In my view the tone and number of these emails do not constitute harassment. Rather, I find that the Landlord has communicated respectfully with the Tenant in the emails and is making reasonable requests/statements. While the Tenant has interpreted the email, dated October 30, 2012, as a threat to close down the business, I find that the statement the daycare can't

operate out of a rental unit without a license may be accurate and was not meant to intimidate.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord has treated the Tenant disrespectfully. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Agent for the Landlord has treated her disrespectfully or that refutes the Agent for the Landlord's testimony that she has not treated the Tenant disrespectfully.

I find that the Tenant has failed to establish that the Landlord has communicated with the Tenant in a manner that has breached the Tenant's right to the quiet enjoyment of the rental unit and I therefore dismiss the Tenant's claim for financial compensation arising from their communications.

Section 32(1) of the Act requires landlords 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 to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Tenant has submitted insufficient evidence to show that the malfunctioning light above the fireplace, the garage door frame, the awnings, the kitchen drawers, and the exterior doors fail to comply with health, safety and housing standards. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a photograph or evidence from a construction specialist, that shows these areas of unsafe, unhealthy, or that they fail to comply with housing standards. As the Tenant has not established the Landlord was obligated to complete the repairs, I find that the Tenant is not entitled to compensation for a delay in making the repairs.

The undisputed evidence is that the Landlord repaired a washing machine that was "smoking". There is no evidence before me that the washing machine was not functional between the time it was reported to the Landlord and the time it was repaired. As there is no evidence that the Tenant could not use the machine for any significant period, I cannot conclude that the Tenant is entitled to compensation for the delay in repairing the washing machine.

I find that the Landlord did not repair the garage door in a timely manner. As the problem was reported on July 02, 2012 and the problem compromised the security of the rental unit, I find that a delay of over three months is unreasonable. I therefore find that the Tenant is entitled to compensation of \$50.00 for any loss of quiet enjoyment that arose from the delay in this repair.

I find that the Tenant's Application for Dispute Resolution has some merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$100.00, and I authorize the Tenant to deduct this amount from one rent payment.

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 06, 2012.

Residential Tenancy Branch