



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, LRE, RR, FF

Introduction

These hearings dealt with the tenant's Application for Dispute Resolution seeking orders to have the landlord make repairs; set conditions on the landlord's access to the unit; to reduce rent for repairs not provided and a monetary order.

Both hearings were conducted via teleconference and were attended by the tenant and two agents for the landlord. The first hearing did not provide sufficient time for all parties to be heard and it was adjourned to be reconvened on January 16, 2013.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord make repairs to the rental unit; to suspend or set conditions on the landlord's right to enter the rental unit; to reduce rent for repairs; to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began on April 1, 2010 as a 6 month fixed term tenancy that converted to a month to month tenancy on October 1, 2010 for a current monthly rent of \$1,460.00 due on the 1st of each month with a security deposit of \$700.00 paid.

The rental unit is located in a strata complex in which the landlord is responsible for 30 units but not all. The strata had initiated a plumbing upgrade that required entry into individual units with work requiring from 18 – 21 days in each unit.

The tenant submits that when he had heard the strata intended to complete such a project he gave the landlord notice that he intended to end the tenancy at the end of September 2012. The parties agree that through discussions the tenant decided to maintain his tenancy.

The tenant submits that the landlord had promised that for the duration of the work in the rental unit the tenant would relocate to another unit in the same residential property but that when he went to move his belongings into the temporary unit it appeared that

work was also underway in that unit. The carpets were still wet from cleaning and there was a strong insecticide smell present.

The tenant further submits that he could not get a hold of any agents for the landlord and had to move his belongings back into his original unit and then find a place to stay because the work in his unit was to begin the next day. The tenant provided an email into evidence dated November 7, 2012 indicating he had been staying with a friend.

The tenant also stated that he had arranged alternate accommodation at a rate of \$115.00 per day for 14 days and that after that 14 day period he stayed with a friend. The tenant seeks compensation in the amount of \$3818.56. However the tenant submits the accommodation was for 29 days at \$115.00, a total of \$3,335.00.

The tenant also seeks \$160.00 for two weeks worth of gas for additional costs to take his children to school and for him to go to work; \$240.00 for the movers he hired to move his belongings from his unit to the temporary unit and back again; and \$1,505.28 for lost wages because he had to deal with these issues and because of his additional time to take his children to school he was docked pay from work. The tenant submits that his hourly rate is \$84.00 and he lost 16 hours of work for a total of \$1,344.00.

The tenant also seeks return of the pro-rated amount of rent for the period of November 4, 2012 to November 30, 2012 that he was unable to live in the rental unit in the amount of \$1,411.33. The tenant provided a copy of a "Reservation Contract" to establish the \$115.00 per day rate but he did not provide any receipts. The tenant did not provide any receipts for gas or movers and he did not provide any documentary evidence confirming his salary or any reduction in pay, during this period.

The tenant's total financial claim is \$6,651.61 however, as noted above it is unclear how the tenant calculated the alternate accommodation charges to be \$3,818.56 when it should be \$3,335.00 and the lost wages of 1,505.28 when it should be 1,344.00.

The tenant submits that the work has mostly been completed except for the replacement of carpeting in the rental unit that was damaged in September from a leak and for which the tenant was compensated with a rent reduction of \$200.00 for the month of October 2012. The tenant seeks to have the carpet replaced and a rent reduction until it is completed comparable in value to the reduction he received for October 2012.

The landlord submitted that the tenant was aware of the project and agrees that they had discussed alternate living arrangements for the tenant during the plumbing project. The landlord testified they had offered the tenant accommodation in this residential property for a temporary move or any other of the landlord's property for a more permanent arrangement.

The landlord also made an offer during the first hearing that included monetary compensation of a \$200.00 rent reduction for November and December 2012 as well as

not implementing a rent increase for the upcoming year that would take effect May 1, 2013. The tenant indicated he was not interested in the offer.

The landlord submits that if any party had asked for the project team to cover up the holes in the walls at the end of each work day the team would have accommodated such a request. The tenant submits that his primary concerns were the dust and mould that would have been exposed to his child and pregnant wife during the project and that it was not a simple matter of covering things up at the end of the day.

The tenant submits that the work was loud and dirty during the day when his wife and child were in the unit and were not able to go elsewhere for extended periods of time during the work. The landlord submits that only one other of their tenants was compensated for any of this work and that they received compensation as they had some damage.

The tenant submits the carpet that had been previously flooded by a toilet has not been replaced and he seeks to have the repair completed. The landlord testified that they believe there is no reason to replace the carpet and that it was not a sewage leak.

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.

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 the *Act*; 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 units 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 breakdown of the building's plumbing system would deteriorate occupant comfort and the long term condition of the building.

I accept the landlord's evidence and testimony that they took all reasonable steps to ensure the project would minimize the impact to tenants, and in particular to the applicant tenant. I also acknowledge that the landlord understood that the work and its schedule was intensive and required intrusion into individual rental units.

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."

In relation to the plumbing project, I find the landlord was fulfilling their obligations under Section 32 of the *Act* to maintain the residential property. I find in the case before me that the landlord took very reasonable steps in offering the tenant alternate accommodation.

However, I find the tenant rejected that offer and failed to allow the landlord any other opportunity to find any other alternate arrangement or repair the items that were of concern to the tenant in the first alternate unit. Further, from the tenant's testimony that his primary concern was during the day for his wife and child to have to endure the noise and dust, I find the tenant failed to show why the alternate accommodation was unsuitable.

Despite the fact the tenant was concerned that the alternate unit had a hole in the wall that was likely a result of the plumbing project; that the carpet had been wet from carpet cleaning; and there was an "insecticide smell" I find the tenant was being unreasonable in rejecting the temporary accommodation, as it was offered only as a temporary solution during the period when work would be completed on his unit.

Once the tenant unilaterally made the choice that the alternate unit was not suitable for their short term purposes I find the tenant is responsible for his own choices in how to deal with the accommodation. In addition, the tenant has provided no evidence that he paid for any alternate accommodation; movers; gas; or lost any income from wages due to missing work.

However, in accordance with Policy Guideline 6 I find it reasonable for the landlord to compensate the tenant and the offer provided by the landlord to a reduction of \$200.00 per month in rent for November and December 2012 and no rent increase for the year effective May 1, 2013 to be reasonable compensation to the tenant.

I will not, in this decision, however, make any ruling that will restrict the landlord's ability to implement an annual rent increase that is allowable under the *Act*. Therefore, I will grant the tenant compensation in an amount that would be equivalent to an allowable

rent increase for 2013 for the period of 1 year or \$55.48 per month X 12 months for a total of \$665.76 plus the \$400.00 rent reduction for the months of November and December. As such the total compensation is \$1,065.76.

In relation to the portion of the tenant's Application seeking to have the carpet repaired, I find, with the landlord's testimony that the carpet does not need replacement that the tenant has failed to provide sufficient evidence that carpet requires repair or replacement. I dismiss this portion of the tenant's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,115.76** comprised of \$1,065.76 compensation and \$50.00 of the \$100.00 fee paid by the tenant for this application, as he was only partially successful in his claim.

I order the tenant may deduct this amount from a future rent payment 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: January 24, 2013