



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

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

Introduction

This hearing was to deal with an application by the tenant seeking compensation in the form of a rent abatement for repairs, services or facilities agreed upon but not provided, an order that the landlord provide services and facilities required by law and an order that the landlord complete repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issues to Be Determined

- Is the tenant entitled to a rent abatement to compensate for damages or losses?
- Should the landlord be ordered to provide services and facilities required by law?
- Should the landlord be ordered to repair and maintain the unit?

The burden of proof is on the tenant.

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of the application for tenancy, copies of communications, photos and written testimony.

The tenancy began on May 15, 2012 with rent of \$1,795.00 per month and security deposit of \$800.00. The tenant testified that when they agreed to move into the 800 square foot unit it was primarily because of the access to an ocean-front deck of 60 square feet and the fact that there was a nice view of the ocean. The tenant testified that representations had been made about in suite laundry being available. The tenant testified that there was also an emergency fire exit available off of the balcony.

The tenant testified that on November 25, 2012 she was suddenly deprived of the use of the balcony due to serious repair work being done. The tenant testified that the view was compromised by a plywood board, her screen door was nailed shut and she no longer had access to the fire escape. The tenant testified that she requested a rent abatement of \$350.00 until the facilities were fully restored, but the landlord has only consented to \$50.00 per month and gave the tenant \$100.00.

The tenant testified that, in response to her complaints about the board blocking the view, the landlord promised to replace the plywood board with a plexi-glass panel and also promised to make a fire escape available, but has not done so. The tenant stated that she feels there has been a material breach of the agreement and is requesting a retro-active rent abatement for the loss of the balcony in the amount of \$200.00 per month dating back to November 25, 2012, and continuing until the repair work is finally complete and she can enjoy the deck.

The landlord argued that the repair work to the building was unavoidable and is critical for the landlord and the tenants. The landlord testified that the completion has been delayed by the fact that the contractor requires a period of dry weather to ensure that moisture problems are eliminated before the final work is done. The landlord estimated that the repair work will be completed by April 30, 2012. The landlord testified that the tenant was not deprived of outdoor space because there is a communal deck still available for use and also felt that the claim for a \$200.00 abatement was exorbitant. The landlord expressed a willingness to restore the view by installing a plexiglass panel and also to ensure that the fire escape is accessible without further delay.

The tenant challenged the landlord's testimony that the communal deck was suitable for use and enjoyment.

The tenant testified that, in addition to the failure of the landlord to supply in-suite laundry, the shared laundry with pay machines was not functional because the spin cycle leaves the clothes too wet. The tenant testified that she was forced to take her laundry to another location at great inconvenience. The tenant is requesting an order to force the landlord to repair or replace the machine.

The landlord testified that they have responded to the complaint about the washer without delay and have had a repair person on site trying to fix it on more than one occasion. The landlord testified that they are still trying to get to the bottom of the problem and agreed that it will be restored to full functionality within one month.

The tenant testified that her repeated requests to have the exterior windows cleaned have only resulted in a promise from the landlord, but nothing has been done. The tenant referred to photos of streaked and unsightly windows.

The landlord agreed that the window-cleaning is on the list for attention and anticipated that it would be completed within 2 weeks.

The tenant testified that she had expressed serious concerns about problems with the electricity as circuits have been tripping. The tenant stated that she feels this may be a safety issue and she has reason to believe that the wiring was not meant to supply three separate suites in the building.

The landlord disputed the tenant's assessment of the wiring and stated that they already had an electrician look at the circuits. The landlord agreed to have this tradesperson issue a report on the safety of the wiring which will be given to the tenant once it has been obtained. The landlord anticipated that this would be done within one month.

The tenant testified that she has made complaints about the fact that the heavy mirrored sliding doors in her bedroom keep coming off the tracks and appear to be separating from the frames. The tenant is requesting that the landlord be ordered to rectify the problem before an accident occurs.

The landlord agreed to install bi-fold doors and committed to having this done by February 15, 2013.

Analysis

Repairs

I find that section 32 of the Act imposes responsibilities on the 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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

In regard to the tenant's request that a plexiglass panel be installed at the window, request for an order to compel the landlord to provide access to a fire escape, claim for repairs to the pay laundry machine, request for an order for window-cleaning, request for proof of safety of the electrical wiring, and request for an order to replace the sliding doors, I find that these matters have all been tentatively resolved by the landlord's verbal commitments. I hereby order that the landlord fulfill the above work within the deadlines provided by the landlord.

If the above issues are not resolved within the stated deadlines, the tenant is at liberty to make an application for dispute resolution seeking compensation.

Rent Abatement

The tenant's application requested that the rent be reduced by \$200.00 per month for repairs, services or facilities not provided. In regard to compensating a party for the loss of services or other damages, I find that section 67, permits a party to be reimbursed for losses and damages if the burden of proof has been met to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses, pursuant to section 7 of the Act. The evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists,
- [2] Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- [3] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- [4] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find as a fact that, although the landlord has not violated the Act because the repairs are necessary for all concerned, the value of the tenancy has been detrimentally affected by the ongoing repair work. I find that there has been a quantifiable loss due to the fact that the use of a portion of the tenant's suite has had to be restricted.

I find that the tenant is entitled to be compensated with an abatement of 7.5 percent of her rent from November 25, 2012 based solely on the comparable square footage of the area loss to her suite.

I find that the tenant is entitled to total monetary compensation of \$341.33, comprised of \$22.13 abatement for 5 days in November 2012, \$134.60 owed for the month of December 2012, \$134.60 owed for the month of January 2013 and the \$50.00 cost of the application.

I find that the landlord has already compensated the tenant in the amount of \$100.00 leaving \$241.33 still owed to the tenant for the past abatement and I order that the landlord compensate the tenant by either refunding this amount or permitting the tenant to reduce her next rent payment by that amount.

In addition to the above, I order that the tenant's rent for February 2013, March 2013 and possibly the rent for April 2013 be reduced by \$134.60, if the deck access has not been fully restored. Thereafter, if the deck is not fully accessible to the tenant after

April 30, 2013, I order that the tenant is entitled to a monthly abatement of \$250.00 each month, or portion thereof, from May 1 2013 continuing until the deck is fully restored.

Conclusion

The tenant was successful in the application and was granted orders for repairs and a rent abatement for the past and future.

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 16, 2013

Residential Tenancy Branch

