



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This is an application filed by the Tenant for a monetary claim for money owed or compensation for damage or loss, for an order of emergency repairs for health or safety concerns, to make repairs to the rental unit, site or property and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the submitted evidence packages, I am satisfied that both parties have been properly served.

It was clarified at the beginning of the hearing that the Tenant's request for emergency repairs and repairs have been completed with the exception of; a leak in the shower stall in which the tiles were improperly repaired, the replacement of the bathroom floor was improperly repaired and the removal of black and wet insulation in the under sink cabinet in the kitchen. The Tenant states that the shower leak and the bathroom floor were fixed, but not to her satisfaction. The Landlord has indicated that he was not aware of any deficiencies, but consented to having a licensed plumber inspect and repair if necessary the mentioned areas and have him provide a written invoice for the inspection/repairs. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The Tenant seeks \$3,180.00 as compensation for the Landlord's 7 month delay in making repairs. The Tenant states that this equals 3 months rent at \$1,060.00 per month. The Tenant states that she chose this amount as it was equal to under ½ of the 7 month duration. The Landlord states that they took over management of the rental on June 1, 2012 and began inspections of the rental units on August 3, 2012 and reported the Tenant's concerns to the owner and requested contractors to provide quotes. The Landlord states that much of the work has been delayed because access to make repairs to the plumbing is gained through a lower rental unit in August. The Landlord state that there have been ongoing issues in gaining access to affect repairs. Access was gained in December and the repairs began. Further access was denied by the lower unit Tenant and the repairs could not be completed. The Landlord states that they are awaiting a decision by the Residential Tenancy Branch for the right to access the lower unit to complete repairs currently.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant has failed to establish a claim for the amount sought. The Tenant has not provided sufficient evidence to satisfy me that the Landlord is negligent in his actions or of any proof of an actual amount for compensation or loss. However, the Landlord has satisfied me that the repairs sought by the Tenant were addressed and has not disputed the unusual duration to complete the repairs. The Tenant has not provided sufficient evidence of what inconveniences were suffered. I find that the Landlord has acted reasonably in the circumstances due to the issues with the lower unit Tenant. I do find that the Tenant has been inconvenienced beyond what would be considered reasonable in the circumstances and I grant a nominal award to the Tenant of \$350.00 (\$50.00 X 7 months). The Tenant may withhold one-time, \$350.00 from the next months rent due upon receipt of this decision.

As for the Tenant's request to further reduce rent, I find that as the Landlord has addressed the repairs sought by the Tenant, that the Tenant's Application is dismissed with leave to reapply pending the Licensed Plumber's Inspection.

Conclusion

The Tenant is granted a nominal award of \$350.00 from which the Tenant may withhold one-time from the next months rent upon receipt of this decision.

The Tenant's Application to further reduce rent is dismissed with leave reapply.

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: February 05, 2013

Residential Tenancy Branch

