



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, RP, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested compensation for damage or loss under the Act, Orders the landlord comply with the Act, that the landlord make repairs and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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

Preliminary Matters

The tenant supplied a package of photographs as evidence; no other written submission was made.

The application set out a claim indicating that attachments included "compensation, repairs, safety, health issues, breach of tenancy contract." The tenant confirmed that a detailed calculation of the claim was not supplied; that the claim was in relation to the 4 years of her tenancy.

The landlord supplied 97 pages of evidence; the tenant confirmed receipt of this evidence.

At one point during the hearing the tenant stated that I had not allowed her to complete her submissions. The tenant said that she thought she had provided everything that was required to make her claim and that Residential Tenancy Branch staff had not properly prepared her for the hearing. The tenant said she does not have the education to properly prepare for a conference call hearing. This submission was made after the

point in the hearing where I suggested that the monetary claim was frivolous and would be dismissed. The tenant was given full opportunity to make oral submissions and final comments before the hearing was ended.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage of loss under the Act in the sum of \$4,999.00?

Must the landlord be Ordered to comply with the Act and to complete repairs?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenant moved into the rental unit in May 2009. In February 2012 the current landlord purchased the home. The tenant continues to reside in the rental unit.

On February 1, 2012 the tenant signed a tenancy agreement, commencing February 15, 2012; the date the landlord was to take possession of the home. The tenancy has now converted to a month-to-month term; rent is \$1,400.00 due on the 1st day of each month. A \$700.00 security deposit and \$50.00 pet deposit was transferred to the landlord at the time of purchase.

The parties signed an addendum that included a number of terms such as the requirement the tenant report any water damage as soon as noticed. The tenant also signed acknowledging that there would be repairs and construction taking place in the home. Windows were to be replaced, a new furnace and heating system, back steps, interior basement framing and insulation, interior repair to the bathroom, woodwork, painting and other repairs as needed were recorded in the addendum, in recognition of the landlord's need to enter the home and make the improvements.

There was no dispute that the tenant understood the landlord would be repairing the home; which would address many of the complaints the tenant had in relation to her previous landlord.

The tenant said that her claim covered the period of time from May 2009 to the present day. The tenant submitted that the landlord has not made all of the repairs and that she has been inconvenienced. The parties agreed that the bathtub has a crack and needs to be replaced. The tenant said she has been asking to have the tub repaired since early 2012; the landlord countered that the tenant had asked him to leave the bathroom renovation for a period of time as she was tired of having renovations completed in the home.

The tenant provided photographs of the tub which requires the placement of tape along an interior portion of the tub. The tenant confirmed she has been able to use the tub but believes it is unstable and that water is leaking into the basement causing mould. The tenant said there is a room in the basement that has a dirt floor and that this is a source of bacteria. The hardwood floor on the main level of the home also needs to be sealed.

The tenant said that the rent payment receipts issued have not spelled her last name correctly and that the landlord is not giving her the gas bills as they arrive. The tenant has not been able to have the gas bills placed in her name, so the landlord has allowed the bill to be issued under his name.

The landlord has recently inspected the bathtub and had agreed he would install some supports under the tub, although he does not believe this is structurally required. The home is 30 years old and does have some old water stains in the basement; there is no evidence of any leaking or presence of mould and the inspection reports he obtained showed no evidence of mould or leaks.

The landlord said that the basement room with a dirt floor is a cold storage room.

When the landlord signed the tenancy agreement with the tenant she had asked that he compensate her for the deficiencies that had existed in her first 3 years of tenancy. The landlord had told the tenant she must seek a remedy from her previous landlord. The landlord had the tenant sign the addendum in recognition of the renovations; that would cause some disruption; the landlord chose to do this vs. evicting the tenant for the reason of renovation. The landlord said that he put a lot of effort into preparing for this hearing, as he has made many improvements to the home in order to provide the tenant with nice accommodation.

The home was fully inspected at the time of purchase; copies of photographs, invoices and inspection reports were supplied as evidence. The landlord has made attempts to improve the home as he did not disagree that repairs were needed. Repairs commenced the day after the landlord obtained possession of the home. The parties agreed that the landlord provided the tenant and her family with a total of \$625.00 compensation for cleaning and disruption caused by the renovation.

During the hearing the landlord said he would complete the bathroom renovation early this spring; expecting to commence in May, 2013. This date will minimize the need for cleaning in the house, as workers will be in and out.

Discussion took place in relation to the landlord's right to enter the home; the landlord does not have a key. The tenant will provide the landlord with the key, so a copy can be made.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There was no evidence before me in support of the tenant's claim for compensation in the sum of \$4,999.00; much of which pre-dated this tenancy. Outside of photographs, the tenant provided no evidence that the landlord has failed to comply with section 32 of the Act; which provides, in part:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

This is a 30 year old home that has undergone what I find was significant repair, since the landlord purchased the home in February 2012. The tenant agreed to remain in the home while renovations were completed and the landlord voluntarily provided the tenant and her family \$625.00 compensation for cleaning and in recognition of the disruption caused.

There was no dispute that the bathtub requires replacement; however, as the tenant has been able to use the tub I find that she has not suffered a loss. I find that the placement of tape over the crack in the tub is not sufficient to support a claim for compensation; but that it has been a simple inconvenience. Within the next few months the landlord will commence a full renovation of the bathroom, at which time the bathroom will be fully improved.

There was no evidence before me that supports are required beneath the bathtub; the landlord may use his discretion in relation to this request made by the tenant.

Therefore, in the absence of evidence that the landlord has breached the Act, resulting in a loss to the tenant, I find that the tenant's claim is dismissed. The tenants provided no evidence in support of her claim that she has suffered any loss and has, in fact, been previously compensated by the landlord.

When rent payments are made in cash the tenant should be given receipts. The landlord may issue the tenant replacement receipts if the tenant's name has been incorrectly spelled.

The tenant pays the gas bills and would like to have those bills given to her as the landlord receives them. This is a reasonable request the landlord should attempt to accommodate.

There was no evidence before me requiring any Orders that the landlord comply with the Act or make repairs. I find that the landlord has been diligent in attending to issues raised by the tenant. Further, the tenant has made a claim for damages that pre-date this tenancy; any issues that relate to the previous tenancy are not the responsibility of the current landlord. A new tenancy agreement signed in 2012 marked the beginning of a new contract and the current landlord's responsibilities commenced at that time.

Therefore, in the absence of evidence that the landlord has breached the Act and failed to comply with section 32 of the Act, I find that the claim is dismissed.

Section 29 of the Act is appended after the conclusion of this decision. When the landlord needs to enter the home in order to complete repairs or for inspection, in the absence of agreement by the tenant, written notice of entry may be given to the tenant. The tenant does not need to be at home in order for the landlord to enter; as long as entry complies with the Act.

Conclusion

The claim is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 26, 2013

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;*
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

