



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; OLC; ERP; RP; PSF; LRE; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord make emergency repairs and regular repairs to the rental unit; an Order that the Landlord provide services or facilities required by law; an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord on February 23, 2013 at 10:30 a.m. and that copies of the Tenant's documentary evidence were hand delivered to the Landlord on March 8, 2013. The Tenant acknowledged receipt of the Landlord's documentary evidence.

Preliminary Matters

The Tenant's Application for Dispute Resolution was corrected to reflect the correct spelling of the Landlord's first name and the Landlord's correct address for service.

It was also determined that no emergency repairs were required at this time.

Issues to be Decided

- Should the Landlord's right of access to the rental unit be suspended or placed under conditions?
- Should the Landlord be ordered to make regular repairs to the rental unit?
- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The rental unit is one of thirteen suites in the rental property. A copy of the tenancy agreement was provided in evidence, which was signed by the parties on November 29, 2010. Rent at the beginning of the tenancy was \$700.00 per month, due on the first day of each month. Current rent is \$730.00. The Tenant paid a security deposit in the amount of \$350.00.

The Tenant gave the following testimony:

The Tenant stated that he cannot control the heat in the rental unit and that it is not adequate in the winter months. He testified that he complained about lack of heat 2 months after he moved in, but the Landlord has been slow to correct the problem. The Tenant stated that a repairman was in the rental unit on March 10, 2013, and that he can now turn the heater on and off, but cannot regulate the temperature. The Tenant stated that lack of heat is not an issue now, but that he is concerned that next winter it will be too cold.

The Tenant stated that the Landlord refuses to give him a parking space at the rental property. He testified that he has no car, but requires a parking space for his own use when carrying groceries and other heavy objects to and from his home, and for his guests' use when visiting. The Tenant stated that parking is included in the rent.

The Tenant testified that the Landlord has fixed the bathroom fan, so it is no longer an issue.

The Tenant stated that the front door to the rental property is not properly secure and that he has had drums and electronics stolen from the storage area.

The Tenant testified that his fridge does not work properly and that his fresh produce is spoiling because it keeps freezing. He stated that the sink basin leaks and that the Landlord did not repair it, but has merely placed a container under the sink to catch the water.

The Tenant stated that the water in the rental unit is sometimes cut off with no warning for periods of time.

The Tenant testified that he has had numerous conversations with the Landlord with respect to these repair issues, and gave the Landlord written demand for repairs on December 12, 2012.

The Tenant stated that the Landlord entered the rental unit when he was not home, and without notice. He said that the front door was locked but the Landlord used his key to enter the rental unit. The Tenant had a female guest staying with him, who was naked and taking a shower when the Landlord entered the bathroom without knocking. He stated that the Landlord started engaging his guest in conversation and that his guest had to tell the Landlord to leave.

The Tenant provided two written statements: one from the female guest who was in the shower when the Landlord entered the rental unit; and one from another occupant in the building. He also provided photographs in evidence.

The Tenant seeks compensation in the amount of \$5,000.00 for loss of peaceful enjoyment and in compensation for not having a parking spot.

The Landlord gave the following testimony:

The Landlord stated that he has owned the rental property for 35 years. He stated that he disputes all of the Tenant's claims and that he has fixed everything that required fixing once the Tenant had advised him of the problems.

The Landlord said that he didn't receive written demand for repairs from the Tenant until March 8, 2013. He stated that a new motorized unit that controls the heat was installed in the Tenant's unit on March 10, 2013. The Landlord said that there is a thermostat in the Tenant's unit that controls the rental unit's temperature, but the Tenant has a cabinet in front of it and does not use it.

The Landlord stated that there are more rental units than there are parking spaces available and that there is a waiting list for the next available parking space. He stated that that the Tenant does not have a vehicle and the tenancy agreement is clear that there is no visitor parking available for occupants' guests.

The Landlord said that the front door is secure now, but that for a time it was not secure because another occupant used to pull on the door with all his weight to open it, damaging the mechanism. The Landlord stated that he has tightened the bolt so the door can no longer be opened without a key. The Landlord said that occupants are warned that they store items in the storage room at their own risk.

The Landlord stated that he checked the Tenant's fridge and it was working fine. He said that the Tenant had set the temperature control incorrectly and that after adjusting it, the thermometer indicates that it is working properly. The Landlord said he didn't notice any frozen produce in the fridge when he checked it. He stated that the fridge was installed a year ago, but that it was a used fridge when it was installed. The Landlord did not know how old the fridge was.

The Landlord stated that he has fixed the basin on the Tenant's sink so it does not leak anymore. He said that the pan was placed under the sink after he repaired it, in order to catch any water if it still leaked. The Landlord stated that the Tenant has not advised him that there are any remaining leaks.

The Landlord stated that the Tenant has embellished the circumstances of the shower incident. The Landlord testified that the local municipality was doing water works over a 6 month period, which required water to be turned off for very short periods of time. On the day in question, a new water line had to be reconnected to the building. Initially, the municipality had the wrong valve, so it took 3 hours to complete the job. The Landlord stated that he went back to his suite when the work was done. He lives directly above the Tenant. He stated that he heard water running for ½ an hour and was concerned that the Tenant might have mistakenly left water "on" when the water mains were turned off for the repairs. He stated that he knocked on the Tenant's door three times, but no one answered. He got another occupant to join him, as a witness, and knocked again, with no answer. He stated that he was concerned that there could be a flood, so he let himself into the rental unit and opened the bathroom door. The Landlord stated that the room was full of steam, and that he heard a female voice say "Get out of here!", so he left immediately. The Landlord stated that he never enters a tenant's home without notice, unless he is asked or if there is a perceived emergency. The Landlord stated that the written statement from the other occupant was not signed and that the other occupant was a friend of the Tenant's female guest and therefore not unbiased.

Analysis

Should the Landlord's right of access to the rental unit be suspended or placed under conditions?

Based on the Landlord's testimony, I am satisfied that the Landlord is aware of the provisions of Section 29 of the Act with respect to providing due written notice when he wishes to exercise his right of entry for a reasonable purpose. Section 29 provides exceptions to the requirement for notice, which include a provision for entry without notice if an emergency exists and the entry is necessary to protect life or property. I find, on the evidence of both parties and the balance of probabilities, that the Landlord

had a genuine concern that there might be damage caused by flooding in the Tenant's suite; that he believed the rental unit was vacant after knocking four times with no answer; and that he had no intention of frightening the Tenant's guest. **I find insufficient evidence to warrant a further restriction on the Landlord's right to enter the rental unit, other than the restrictions already provided in Section 29 of the Act.**

Should the Landlord be ordered to make regular repairs to the rental unit?

Based on the testimony of both parties, I am satisfied that the Landlord has addressed the Tenant's concerns with respect to repairs regarding the sink, bathroom fan and fridge. The Tenant testified that the bathroom fan has been fixed. I find that the Tenant provided insufficient evidence that the fridge and the sink require further repairs.

I find that the Tenant provided insufficient evidence that the thermostat in the rental unit was not operating after the Landlord made repairs to the heating system on March 10, 2013.

The Tenant is concerned that the front door to the rental property is not secure. He provided a photograph of the front door locking mechanism. It appears to be very old and appears to have been repaired many times. The wood surrounding the lock does not appear to be sound, and there are metal braces screwed into the wood in an apparent attempt to reinforce it. I find that, on the balance of probabilities, the door's locking mechanism is not sound. **I order the Landlord to replace the front door and lock with a new door and lock within 15 days of receipt of this Decision.** If the Landlord does not attend to this repair within 15 days, the Tenant is at liberty to file another Application for Dispute Resolution for compensation.

Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The onus is on the party applying for compensation to provide sufficient evidence to prove their claim, on the balance of probabilities.

In this case, I find that the Tenant provided insufficient evidence to support his claim for compensation for loss of peaceful enjoyment of the rental unit. However, **I find that the**

Tenant is entitled to compensation for loss of service or facilities with respect to parking.

The tenancy agreement states, in paragraph 6:

Basic living space	<u>\$700.00</u>	
Parking	<u>NO CHARGE</u>	ONE PASSENGER VEHICLE, ONE SPOT PARKING ONLY – TENANT PARKING ONLY
Total	<u>\$700.00</u>	(Due on or before the first of each month.)

Therefore, I find that rent includes parking for one passenger vehicle per tenant. Whether the tenant chooses to use the parking spot for his vehicle, or for a vehicle he is borrowing, or for a guest to park in his spot, is up to the tenant. If a guest parks in the tenant's spot, then I do not find that the guest is illegally parking. I find that the Landlord has not complied with paragraph 6 of the tenancy agreement and that the Tenant is entitled to compensation for the loss of the parking space at \$25.00 per month. **I award the Tenant the sum of \$700.00 (\$25.00 x 28 months). I further find that effective May 1, 2013, monthly rent is \$705.00, after taking into consideration the loss of the value of the tenancy due to no parking availability.**

The Tenant has been partially successful in his application and I find that he is entitled to recover the cost of the filing fee of **\$50.00** from the Landlord.

The Tenant has established a total monetary award of **\$750.00**. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$750.00 from future rent due to the Landlord.

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

I find that the Tenant did not provide sufficient details with respect to this portion of his claim (for example, what section of the Act or regulation he sought the Landlord to comply with). Therefore this portion of the Tenant's claim is dismissed.

Conclusion

I order the Landlord to replace the rental property's front door and lock with a new door and fully functioning lock within 15 days of receipt of this Decision. If the Landlord does not attend to this repair within 15 days, the Tenant is at liberty to file another Application for Dispute Resolution for compensation.

I find that the Tenant has established a monetary award in the amount of **\$750.00** pursuant to the provisions of Section 67 of the Act. Further to the provisions of Section 72 of the Act, **the total monetary award in the amount of \$750.00 may be deducted from future rent due to the Landlord.**

I find that monthly rent, effective May 1, 2013, is \$705.00.

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: April 11, 2013

Residential Tenancy Branch

