



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Broadview Court Holdings Ltd.
and [tenant name suppressed to protect privacy]

INTERIM DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing was reconvened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for remaining Orders as follows:

The Tenant applied on February 19, 2013 for:

1. A Monetary Order for compensation or loss - Section 67.

The Landlord applied on March 1, 2013 for:

1. A Monetary Order for unpaid rent – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the Hearing, the Landlord confirmed that rent has been paid and no order for unpaid rent is required.

The Landlord requests that the Tenant’s application be dismissed for the following reasons:

- The claim for compensation is unrelated to the original hearing, there has been no previous discourse on the claim, there is a lack of evidence to support the claim, there are no details providing rationale and reasons for the amount claimed;

- The Landlord's copy of the Tenant's application is unsigned and is a fatal flaw; and
- The Tenant has manipulated the procedures by previously asking for and obtaining an in-person hearing when one was not necessary.

I decline to dismiss the application for the following reasons:

- the Tenant has yet to provide oral evidence to support the claims and the materials filed by the Tenant provide reasonable notice and rationale for the claim;
- the copy of Tenant's application provided to the Residential Tenancy Branch (the "RTB") contains the Tenant's signature and the lack of a signature on the Landlord's application does not affect the substantive nature of the claim contained in the application and is therefore not fatal; and
- the request for and provision of an in person hearing is routinely offered and determined by the RTB under certain circumstances and I do not therefore consider the Tenant's use and provision of this offer by the RTB to be an abuse of the process.

The Landlord requests that the Tenant's Advocate be excluded from the Hearing as it is clear that the materials developed and presented as evidence do not come from the Tenant but from the Advocate and that the Rules of Procedure require written permission by the Tenant for the use of an agent. As there is no rule preventing any party from obtaining help in preparing and presenting evidence and as the Advocate is not an "agent", I decline to exclude the Advocate.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of its filing fee?

Background and Evidence

The tenancy has been ongoing for 31 years. Rent of \$874.76 is payable monthly.

The Tenant states that the unit and the building containing the unit are substandard and request repairs made to bring the unit to a presentable standard. The Tenant states that they are seeking compensation only if such repairs are not made. The Tenant provided photos of the unit. There is no dispute that the Landlord made a full inspection of the unit following the hearing on March 11, 2013, that a number of items in the unit have been repaired and that a carpet strip will be installed in the unit today to repair a tear in the carpet.

The Tenant states that the carpets were last replaced in 1984 or 1985, that the carpet is beyond its useful life, that the Tenant asked for the carpets to be replaced 12 years ago and numerous times since then, and that the Landlord has failed to replace the carpet. The Landlord states that during the inspection in March 2013 the carpet was noted to not be worn but that the Tenant has failed to maintain the cleanliness of the carpet that was new in 2004.

The Tenant states that the kitchen cabinets are older than 25 years and that the arborite is damaged. The Tenant states that the Landlord was asked 4 years ago to replace the cabinets and that the Landlord has provided other units with new cabinets. The Landlord states that they were not informed of any damage to the cabinets until now and that at the inspection in March 2013, the Landlord noted that the Tenant hangs items from the cabinet doors causing damage to the finish. The Tenant states that there is no damage to the finish on the cabinets.

The Tenant states that the wooden deck requires a recoating due to holes in the wood and the likelihood of the damage expanding. The Tenant states that other units have had their deck recoated. The Landlord states that the deck has damage due to the Tenant pressure washing and using a grinder on the deck without permission. The Landlord states that an attempt to repair the deck was made 5 years ago however due to the mess on the deck they were unable to. The Landlord states that the Tenant is reluctant to allow the Landlord into the unit to make repairs and makes things difficult for

the tradesmen that come to the unit. The Tenant states that the deck was pressure washed 3 years ago but denies using any grinder on the deck.

The Tenant states that the walls of the unit require painting and were last painted by the Tenant, with the Landlord supplying the paint, 18 years ago. The Landlord states that the Tenant painted the unit twice during the tenancy and they have no idea when the unit was last painted. The Landlord states that the Tenant painted the unit a different color than the original and that at the end of the tenancy the Landlord expects the Tenant to restore the wall to the original color or the Landlord will seek compensation. The Tenant states that the Landlord fails to make timely repairs and that when repairs are started they are unreasonably slow to finish. The Tenant states that repairs to the unit's bathroom was started in October 2010 and not finished until September 2011.

The Tenant states that the Landlord is harassing the Tenant and breaching the Tenant's right to privacy by having surveillance cameras, monitoring the cameras and making notes of the Tenant's actions. The Tenant states that the Tenant was unaware this was happening until they received the Landlord's evidence package containing a log of the Tenant's activities showing the Tenant is being watched and recorded in daily activities such as coming and going and doing laundry. The Landlord states that the cameras are recently installed security measures and are located at the inside and outside of the main lobby, the outer building, the underground parking and the laundry room. The Landlord states that Landlord uses the cameras to carry out due diligence for their responsibilities to all tenants and to collect evidence. The Landlord states that there has been an issue with the Tenant overstuffing the laundry machines, which the Landlord states could cause damage to the machines. The Landlord states that all tenants were notified of the cameras being installed. The Landlord states that it is ironic that the Tenant's unit can be seen by these cameras to be in good repair.

The Advocate argues that the use of the cameras to obtain evidence for making claims is not a lawful use of such surveillance, contrary to privacy laws and that such use is a

significant invasion of privacy. The Tenant seeks an order stopping the Landlord from using the cameras for this purpose.

In the event the Landlord does not make repairs and continues to monitor the Tenant through the surveillance cameras the Tenant, the Tenant claims \$2,500.00 for the breach of privacy and \$2,500.00 for living in a substandard unit for several years

The Landlord states that they have done their best to maintain the unit and they ask the Tenant to send future requests for repairs to the Landlord in writing.

Analysis

Section 32 of the Act provides that 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.

The Residential Tenancy Branch provides a guideline on the useful life of building elements for the determination of damages being claimed by a landlord. In my view, this guideline also provides assistance on standards for reasonable states of decoration and repair. Under these guidelines, a carpet carries a useful life of 10 years, paint on walls carries a useful life of 4 years, wooden decks carry a useful life of 20 years and cabinets carry a useful life of 25 years. Although the Landlord states that the carpets were replaced in 2004, considering the Tenant's photo and oral evidence of the carpets being 28 years old and considering that the Landlord provided no supporting evidence of the age of the carpet, I find on a balance of probabilities that the carpet is well over its useful life. As the Landlord did not know when the unit was last painted, I accept the Tenant's evidence that the walls were last painted over 18 years ago and that the paint is significantly over its useful life. As no evidence was provided as to the age of the

cabinets by the Landlord and considering that the tenancy is over 30 years, I find that the cabinets are also well over their useful life. No evidence was provided by either Party on the age of the deck, however given the photos I find that the deck requires maintenance and that the Tenants request for the deck to be re-coated to be a reasonable request. As a result of the findings in relation to the walls, carpet and cabinets, I find that the Landlord has failed to maintain and provide the unit in a reasonable state. As such I find that the Landlord must replace the carpet and cabinets and paint the walls of the unit. As the Tenant did not however include in its application a claim for repairs, should the Landlord fail to make these repairs on its own initiative within a reasonable time from the date of receipt of this Decision, I give the Tenant leave to reapply for repairs to the above items for which the above findings are final and binding. The Tenant may also reapply for compensation in relation to repairs not so completed.

Given the above findings, I find that the Tenant has substantiated compensation for the Landlord's failure to maintain and repair the unit to date, however noting that the Tenant did nothing for a significant length of time, I find that the Tenant failed to mitigate its losses to the extent claimed and I reduce the Tenant's entitlement to half of its claim of \$2,500.00 in the amount of **\$1,250.00**. Noting that the Tenant only wants compensation if repairs are not done, I leave it to the Tenant to negotiate the completion of any repairs in lieu of enforcing its monetary entitlement.

Given the Tenant's argument that the Landlord's use of surveillance cameras is unlawful under privacy legislation, I find that I may not make a determination on this matter as this is a matter for determination by another body such as the Office of the Information and Privacy Commissioner. This body makes determinations in relation to such privacy laws as the Personal Information Protection Act. I refer the Tenant to this body to obtain a determination of whether the surveillance carried out by the Landlord and the subsequent use of such information obtained by such surveillance is unlawful and should the Tenant obtain a finding that such surveillance is unlawful, I give the Tenant leave to reapply for compensation.

As the Landlord's application has met with no success, I decline to award recovery of its filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,250.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 18, 2013

Residential Tenancy Branch

