



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, ERP, RP, OLC, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to make emergency repairs; for authorization to reduce the rent; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that she sent the Application for Dispute Resolution, the Notice of Hearing, and several documents she wished to rely upon as evidence to both Landlords, via registered mail, on April 10, 2013. The Landlord acknowledged receipt of both packages.

Issue(s) to be Decided

Is the Tenant entitled to reduced rent or a monetary Order as compensation for services/facilities agreed upon but not provided and is there a need for an order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement that began on March 01, 2013 and that the agreement required the Tenant to pay monthly rent of \$1,000.00.

The Landlord and the Tenant agree that the Tenant moved most of her property into the rental unit on March 01, 2013; that when she was moving her property she noticed an unpleasant odor in one of the bedrooms; that she informed the Landlord of her

observations on March 01, 2013; that she informed the Landlord she could not stay at the rental unit because of the odor; that the Landlord had all of the carpets in the unit replaced on March 02, 2013; and that the Tenant was able to fully move into the rental unit after 6 p.m. on March 02, 2013.

The Landlord and the Tenant agreed that the Tenant was only required to pay \$845.00 in rent for March, \$75.00 of which was compensation for being unable to sleep in the rental unit on March 01, 2013 and the remainder was compensation for issues that are not related to these proceedings. The parties agree that the Landlord offered to pay for alternate accommodations for the evening of March 01, 2013. The Tenant stated that she stayed with a friend on that date and did not incur any costs for alternate accommodations.

The Tenant is seeking compensation for two days of lost wages. She stated that she is an on-call teacher; that she turned down the opportunity to work on March 01, 2013 in anticipation of moving into the rental unit; and she wants compensation for her lost wages as she was not able to move into the rental unit on that day. She stated that she lost an additional day of wages communicating with the Residential Tenancy Branch in preparation for these proceedings and participating in this hearing.

The Landlord contends that the Tenant could have worked during the day on March 01, 2013 and moved into the rental unit after she completed work, thereby not losing any wages.

The Tenant stated that on March 03, 2013 she informed the Landlord that the furnace in the rental unit was not working; that on March 04, 2013 the Landlord told her that an electrician would investigate the problem; that on March 12, 2013 an electrician inspected, but did not repair, the furnace; that on March 27, 2013 or March 28, 2013 another electrician inspected, but did not repair, the furnace; that the furnace was repaired on April 10, 2013; that she borrowed a space heater from her father; that she initially could not use the space heater because it kept "tripping" the circuit breaker; that on April 05, 2013 a tradesperson suggested that she use an extension cord to operate the space heater; and that she was able to use the space heater to heat the living room after April 05, 2013.

The Landlord stated that she believes she was informed of the problem with the furnace sometime during the first week of March of 2013; that on March 12, 2013 she had an electrician inspect the rental unit; that she believed he had repaired the furnace; that when she realized the furnace was still in need of repair she had it inspected again on March 27, 2013 or March 28, 2013; that the furnace was repaired on April 10, 2013; and that she believes the Tenant was using a space heater as the hydro costs were significantly higher than usual for this period of time and because a tradesperson working in the unit informed her that there was a space heater in the unit, although he did not tell her he had seen it in operation.

The Landlord and the Tenant agree that the Tenant reported that a circuit breaker tripped whenever she used the dryer and that this problem was repaired by an electrician on April 10, 2013. The Tenant stated that she was unable to use the dryer until March 12, 2013, when an electrician suggested she turn off the hot water tank whenever she needs to use the dryer.

The Landlord and the Tenant agree that the Landlord informed the Tenant that baseboards and closet doors would be installed prior to the start of the tenancy; that the baseboards in one bedroom and the kitchen were not installed until April 16, 2013; and that 4 closet doors were not installed until April 16, 2013.

The Landlord and the Tenant agree that a gasket on the fridge door is mouldy and damaged, which was not discussed at the start of the tenancy and was not reported to the Landlord until early March. The Landlord stated that she intends to have the fridge gasket repaired. The Tenant stated that the fridge appears to function normally, regardless of the gasket. The Tenant submitted no evidence to show that the mould on the gasket represents a health hazard; that the fridge does not comply with health, safety and housing standards required by law, and/or that the condition of the fridge makes the rental unit unsuitable for occupation by a tenant.

The Landlord stated that the delay in repairing the rental unit was, in part, because there was difficulty coordinating a time to complete the repairs with the Tenant. The Tenant stated that the delays were, in part, the result of a tradesperson coordinating a time with her and then not attending at the scheduled time and, in part, because on at least one occasion she was not provided with adequate notice of the intent to enter the unit.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement which was to begin on March 01, 2013, for which the Tenant agreed to pay monthly rent of \$1,000.00.

On the basis of the undisputed evidence, I find that the Tenant was unable to fully move into the rental unit on March 01, 2013 as the carpet in one of the bedrooms had an unpleasant odor, which the Landlord elected to remedy by replacing the carpets in the entire unit. As the Tenant did not have full use of the rental unit for the majority of the first two days in March, I find that she is not obligated to pay rent for March 01, 2013 or March 02, 2013. The per diem rent for this rental unit for March was \$32.26, which equates to \$64.52 for two days. As the Landlord has already compensated the Tenant for the delay in moving into the unit, in the amount of \$75.00, I find that the Tenant has already been fully compensated for the delay.

Section 67 of the *Residential Tenancy Act (Act)* authorizes me to order a landlord to pay compensation to a tenant for losses that a tenant incurs as a result of the landlord not complying with the *Act* or the tenancy agreement. I find that the Tenant elected not to

work on March 01, 2013 before she knew that she could not fully move into the rental unit and I therefore cannot conclude that her lost wages were the result of the Landlord's failure to provide a rental unit that was in reasonable state of repair at the start of the tenancy. I therefore cannot conclude that the Landlord is obligated to compensate the Tenant for any wages lost on March 01, 2013.

In determining the matter of lost wages from March 01, 2013, I was further influenced by the fact that the Tenant was able to move the majority of her belongings into the rental unit on March 01, 2013 and that the time she spent away from work was not completely fruitless.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Tenant's claim for any loss of wages she incurred when preparing for, or participating in, these proceedings.

Section 32(1) of the *Act* requires landlords 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, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Landlord failed to comply with section 32(1) of the *Act* when the Landlord did not provide the Tenant with a reasonable method of heating the rental unit between March 03, 2013 and April 10, 2013.

On the basis of the testimony of the Tenant, I find that the Landlord was informed of the problem with the furnace on March 03, 2013. In determining this date, I find it is not inconsistent with the testimony of the Landlord, although she could not recall the exact date of the report. I find that the Landlord cannot be held liable for not providing heat prior to March 03, 2013, as there is no evidence that Landlord was informed of a problem prior to that date.

On the basis of the undisputed evidence, I find that the Landlord never provided the Tenant with a space heater, although she did have access to one space heater. On the basis of the testimony of the Tenant, I find that she was unable to use this space heater until April 05, 2013. In determining this matter I placed little weight on the Landlord's testimony that a tradesperson told her he saw a space heater in the unit, as there is no evidence that he saw it in operation and the Tenant readily acknowledged that she had a space heater in the unit.

In determining whether or not the Tenant used the space heater in any part of March, I placed little weight on the Landlord's testimony that hydro expenses at the unit during this period were significantly greater than for the same period in previous years. I find there are many possible explanations for the increased usage and I cannot rely on this testimony to discount the testimony of the Tenant, which was forthright and direct.

I find that the Landlord's failure to provide a heat source in the rental unit between March 03, 2013 and April 10, 2013 significantly reduced the value of this tenancy, given that temperatures are typically cool during this period. I therefore find that the Tenant is entitled to compensation, pursuant to section 67 of the *Act*, in the amount of \$200.00, for being without a heat source during this period. This is a subjective award based on my assessment of how the absence of a furnace impacted the tenancy. As the furnace has now been repaired, I find there is no need to order the Landlord to repair the furnace.

On the basis of the undisputed evidence, I find that the Tenant was unable to use the dryer in the rental unit between March 01, 2013 and March 12, 2013, after which she could use it with a minor inconvenience. As a dryer was provided with the rental unit, I find that the Tenant is entitled to compensation for being unable to use the dryer for approximately twelve days and for the inconvenience of having to turn off the hot water heater when using the dryer for approximately one month. I find that the Tenant is entitled to compensation, pursuant to section 27(2) of the *Act*, in the amount of \$25.00, for the temporary withdrawal of this service and for the inconvenience of having to turn off the hot water heater. This is a subjective award based on my assessment of how the temporary disruption impacted the tenancy. As the situation has now been remedied, I find there is no need to order the Landlord to repair the circuit breaker.

On the basis of the undisputed evidence, I find that the Landlord agreed to install baseboards and closet doors prior to the start of the tenancy and that 4 closet doors and some baseboards were not installed until April 16, 2013. As there was a minor delay in completing these promised installations, I find that the Tenant is entitled to compensation, pursuant to section 27(2) of the *Act*, in the amount of \$10.00, for the minor inconvenience caused by the delay. This is a subjective award based on my assessment of how the minor delay impacted the tenancy. As the items have now been installed, I find there is no need to order the Landlord to install them.

As landlords are only obligated to make repairs to a rental unit when the unit does not comply with health, safety and housing standards required by law, or when the condition of the unit, or something in it, makes the rental unit unsuitable for occupation by a tenant, and there is no evidence that the fridge does not comply with these standards or that the fridge renders the rental unit unsuitable for occupation, I cannot find that the Landlord is obligated to repair the fridge or that the Tenant is entitled to compensation for the condition of the fridge, pursuant to section 32 of the *Act*.

As there is no evidence that the Landlord promised to repair the fridge gasket or to provide the Tenant with a fridge that was in pristine condition, I cannot find that the Landlord is obligated to repair the fridge or that the Tenant is entitled to compensation for the condition of the fridge, pursuant to section 27(2) of the *Act*.

In determining this entire matter I have placed no weight on the Landlord's argument that it was difficult to coordinate a time to complete repairs. The Landlord has the right

to enter a rental unit for the purposes of conducting repairs, without permission from the Tenant, providing the Landlord provides notice in accordance with section 29 of the *Act*. As the Landlord has the right to enter a unit to make repairs, in accordance with section 29 of the *Act*, the Landlord is obligated to make necessary repairs even when the Tenant does not grant permission to enter the rental unit.

I find that the Tenant's Application for Dispute Resolution has merit that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$285.00, which is comprised of \$235.00 in compensation and \$50.00 for the fee paid for filing this Application for Dispute Resolution. I authorize the Tenant to reduce one monthly rent payment by this amount, in full satisfaction of this monetary claim.

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 29, 2013

Residential Tenancy Branch