



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR, FF

Introduction

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

1. An Order Cancelling a Notice to End Tenancy – Section 47;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to reduce rent - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

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

At the onset of the Hearing, the Tenant stated that as the tenancy has ended, the Tenant no longer seeks a reduction in rent or a cancellation of the notice to end tenancy.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy was to start on September 1, 2012 for a fixed term to December 31, 2012 however due to renovations and repairs to the unit, the Tenant did not move in until September 17, 2012. Rent of \$700.00 was payable monthly. No security deposit was

collected by the Landlord. The Tenant paid no rent for September and October 2012 in compensation for the Tenant's losses incurred due to ongoing work and repairs to the unit during those months.

The Tenant states that in November 2012 the Landlord provided the Tenant with a baseboard heater for the living room as there was no heat in that room. The Tenant states that there was no heat in the kitchen. The Tenant states that the heat to the bedroom was controlled by the adjoining unit's tenant. The Tenant states that as the Landlord did nothing more to provide heat, the Tenant and the neighbour remedied the problem themselves in February 2013 by purchasing a digital thermostat and maintaining a regular temperature.

The Landlord states that the kitchen and bedroom were in a studio suite that had heating from the lower furnace and that the suite was originally an open concept suite. The Landlord states that this suite was renovated to attach to an adjoining workshop that became the living room and that at the request of the Tenant, the suite had walls put in place to remove the open concept. The Landlord states that Tenant did have access to the thermostat and that when the baseboard heater was installed in the living room the Tenant told the Landlord all was fine with the heat.

The Tenant states that for November and December 2012 the unit had a limited supply of hot water and that the Tenant was consistently without hot water. The Tenant states that the unit also had low water pressure and that this problem continues in the kitchen. The Landlord states that the hot water tank provided hot water to both the Tenant and the upper tenants who were a family of four with a baby and that when the Tenant informed the Landlord of the shortage the Landlord immediately hired contractors to restore sufficient hot water however due to problems with the contractors and their timelines the Landlord was unable to complete the repairs until on or before December 25, 2013.

The Tenant states that the clean up from the repairs done between November 2012 and January 2013 were left to the Tenant.

The Tenant states that the upper tenants were a rambunctious family that caused significant noise all hours of the night and day from the onset of the tenancy and that despite the Landlord speaking to these tenants about the noise, nothing changed. The Parties confirm that the noise from the upper tenants was daily living noise and not in relation to other disturbances. The Landlord states that the upper tenants were warned that that the Landlord would seek an end to their tenancy and were also given the opportunity to mutually agree to end their lease however these tenants ended the lease themselves informing the Landlord that they were tired of the Tenant's noise complaints.

The Tenant states that on April 1, 2013 new tenants moved into the adjoining unit with a pit bull that charged at the Tenant's son and dogs. The Tenant states that the Landlord erected a fence made out of chicken wire but that this only blocked the Tenant's access to the laundry. The Tenant states that the wire was unhooked to allow access after two weeks and during this period of time the Tenant took her laundry to her parents. The Tenant states that the new tenants were drug dealers and that the Tenant informed the police. The Landlord states that he was misled by the new tenants about the pit bull and that they have since been issued a one month notice to end tenancy for cause. The Landlord states further that due to limited time and money, the wire was the only repair immediately possible on a temporary basis.

The Tenant states that the bedroom did not have a light fixture but did have an electrical outlet. The Tenant states that after the Landlord made repairs to the unit through the bathroom wall, the hole in the wall was only covered with a large mirror, that there was no noise barrier and that if the mirror was moved, the adjoining tenant could see the Tenant on her toilet. The Tenant states that on one occasion the Tenant and adjoining tenant shook hands through the hole between their units. The Landlord states that the bathroom is fully functional and that the Tenant's problem with the mirror only arose

when the Tenant wanted a smaller mirror. The Landlord states that he did return to finish those repairs.

The Tenant claims reimbursement of rent paid for November 2012 to January 2013 inclusive and reimbursement of half the rent for March 2013.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the evidence of the Tenant I find that the Tenant did suffer discomfort, inconvenience and loss from limited heat and water supply, noisy and problematic neighbours, and ongoing repairs. However, in also considering the Landlord's evidence of repairs and efforts made to address the problems and considering that the Tenant otherwise had full use of the unit, I find that the Tenant has not suffered losses to the extent claimed. I find that the Tenant is only entitled to nominal compensation of a portion of the rent paid for each month claimed in the amount of **\$300.00** for the period November 2012 to January 2013 and \$50.00 for March 2013 for a total of **\$350.00**. As the Tenant has had limited success on the amount claimed, I decline to award the filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$350.00**. 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: May 07, 2013

Residential Tenancy Branch

