



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC OLC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act for orders as follows:

- a) An Order that the landlord comply with the Act, make repairs, eradicate pests and secure their peaceful enjoyment of the premises pursuant to sections 28, 32 and 33;
- b) A Monetary Order for a rent rebate or other compensation for the problems and for repairs they completed themselves.

SERVICE

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package and evidence. The landlord acknowledged receipt by registered mail.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord is not fulfilling obligations under the Act to do repairs, to secure their quiet enjoyment and to meet health standards and eradicate pests? If so, what orders for repairs should be issued to the landlord and what, if any, is the amount of compensation to which they have proved entitlement? Are the tenants entitled to the return of their security deposit?

Background and Evidence

The landlord attended the hearing. Both parties were given opportunity to be heard, to present evidence and to make submissions. A significant amount of oral and documentary evidence was presented, not all of it is quoted but that which is relevant to the decision is noted. English is a second language to most of the participants so some of the claims had to be clarified. Some photographs were also submitted as evidence.

It is undisputed that the tenancy began on February 1, 2012. Rent is \$700 a month and a security deposit of \$350 was paid. The tenants are still in residence and have written

a letter asking for its return. The tenants claim \$4200.00 as compensation for the following issues:

1. The bathtub drain needed repair from the time they entered the unit, they complained in June 2012 but nothing was done until it was fixed recently by a relative; the tenant paid the relative \$100; the relative called into the hearing and testified he received this for finally clearing the drain. He said there was something stuck down inside the drain. He said it was okay when he left. The tenant said the tub would accumulate water and made it difficult to shower. The landlord said it was discussed and he offered to pay the tenant \$60 to find someone to fix it but then the tenant said he had fixed it himself. The tenant said that he got quotes from plumbers of about \$200 to clear the drain; they tend to charge \$60 an hour.
2. There was a broken planter box and the landlord would not fix it. The landlord said they offered to remove it as this outside box is not a necessity but the tenant wanted to keep it for their own use, so the landlord supplied wire and the tenant used the wire to attach the side which was loose.
3. The tenant said there is no hot water at times and the water quality is bad. They supplied photographs of buckets of dirty water as evidence. The landlord said they had checked the water on three occasions when the tenant complained and found there was hot water and there is no problem with the quality of water. The landlord provided evidence from the upstairs tenant to confirm that. He speculated that the tenants had used a dirty bucket. The tenants said it was when the hot water ran out, the sediment from the tank made the water dirty.
4. The tenant complains of ant infestation and sent several photographs to illustrate the amount of ants; many are outside but some are entering the home. He said the infestation was there in 2012 but he did not complain until April 2013 when it seemed to be increasing. The landlord supplied a bottle of pest spray and said the problem is made worse by the tenants' accumulation of items by the door.
5. The tenants complain that the landlord is not doing enough to control the second hand smoke and the noise which is seriously disturbing their peaceful enjoyment. The tenant stated that he cannot open his window and has blocked doorways and openings to try to prevent the entry of smoke. The landlord said the upstairs tenants have it in their lease that there is no smoking permitted inside their unit, they have assured him that they are not smoking but that sometimes guests smoke outside. He said he cannot control outside smoking. The landlord said that the upstairs tenants have been warned about noise after 10p.m. but they state that these tenants are banging at them even at 8:30p.m. at night. He has warned the tenants to try to walk quietly and keep noises down.

6. The tenants request 24 hour written notice of landlord's entry and the landlord was advised of the requirements of section 29 of the Act to provide written notice. He said he had just telephoned in the past.

The tenant went on to assure me that his character is good, they pay their rent on time and get along well with neighbours but this tenancy has caused them emotional pain. He was advised that he can give one full month's notice to end the tenancy. If rent is payable on the first of the month, he must give written notice before the end of the month. Apparently their lease which is in Chinese states it must be a two month notice but I advised the parties that the lease cannot over ride the provisions of the Act.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis

Issues and Findings:

The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

It was difficult to determine the facts in the bathtub issue as the parties were complaining about the "cover" and water. It became clear that the problem was with the draining of the bathtub; the landlord was telling the tenant that they had to lift the "cover" (stopper) and it would drain. I find the tenants' evidence credible as it is supported by the letters of complaint, some photographs and the testimony of the relative who did the repair. I find the weight of the evidence is that the tenants complained to the landlord in June 2012 and were not able to get this fixed until April 2013 and they paid \$100 for it. If the landlord could have fixed it for \$60, he had the option to do it himself. I find the tenants entitled to a deduction from their rent of \$100 and a further \$5 a month for the 10 months that they suffered this aggravation from the time they first complained. In total I find the tenants entitled to a deduction of \$150 from rent for the bathtub problem.

In respect to the issues of the planter box, the hot water supply and quality of the water, I find the landlord's evidence more credible and prefer it to the tenant's evidence as it is supported strongly by documentary evidence. The photograph of the planter box which shows one side detached and then wired up illustrates that this is a box in the garden, it does not impact the tenants living conditions and the landlord had offered to remove it.

I find the tenant voluntarily wanted to wire it up; I do not find the tenant entitled to compensation for their own choice to keep the planter box. On the hot water issue, I find the landlord fulfilled their obligations in inspecting the complaint at least three times and each time, the landlord found there was hot water. These inspections are verified by the upstairs tenant who noted no issues with the supply or quality of the water. I find the landlord has not through act or neglect failed to fulfill his obligations and I dismiss the claims of the tenant for alleged problems with the planter box, hot water supply and quality of water.

I find the tenants' evidence credible on the ant infestation. This complaint was made in April 2013; I find the landlord's response of supplying a bottle of pest spray is inadequate to address the growing infestation. An Order will be issued to the landlord to have a pest control professional eradicate the ants with a provision that the tenant may deduct \$10 from his rent for every month starting July 1, 2013 until a pest control professional has addressed the problem.

I find the weight of the evidence is that the landlord is doing everything he can to control the issues of second hand smoke and noise. He has incorporated in the lease of the upstairs tenants that they cannot smoke on the premises and warned them again about it. I find that the landlord is correct that he cannot control persons smoking outside. As I find that the landlord by act or neglect has not caused or contributed to the problems of the tenants, I find they are not entitled to compensation for these problems.

I find the tenant is entitled to 24 hour written notice from the landlord specifying the date, time and purpose for any entry according to section 29 of the Act and the landlord was so instructed in the hearing. Violation of this provision may violate the tenants' rights to privacy and peaceful enjoyment.

I find the tenants' security deposit must be dealt with in accordance with section 38 of the Act and they are not entitled to demand its refund before vacating the premises so I dismiss this claim of the tenant.

Conclusion:

I HEREBY ORDER THAT THE TENANT IS GRANTED A REBATE OF \$150 FROM THEIR RENT FOR THE MONTH OF JUNE 2013. THEIR RENT WILL BE \$550 FOR JUNE 2013 ONLY.

I HEREBY ORDER THE LANDLORD TO HAVE A PROFESSIONAL PEST CONTROL PERSON ERADICATE THE ANT PROBLEM BY JULY 1, 2013. IF PEST CONTROL

HAS NOT ADDRESSED THE PROBLEM BY JULY 1, 2013, I ORDER THAT THE TENANT MAY REDUCE THEIR RENT BY \$10 A MONTH UNTIL THIS IS DONE.

I HEREBY ORDER THE LANDLORD TO GIVE 24 HOURS WRITTEN NOTICE OF ANY INTENTION TO ENTER THE PREMISES SPECIFYING DATE, TIME AND PURPOSE FOR ENTRY IN ACCORDANCE WITH SECTION 29 OF THE ACT.

I dismiss the other claims of the tenant in their entirety. No filing fee was involved.

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 17, 2013

Residential Tenancy Branch

