



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kandola Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement.

The Tenant filed her Application for Dispute Resolution on February 4, 2013. The matter was scheduled to be heard by teleconference on April 24, 2013. At the April 24th Hearing, the Tenant testified that she served the Landlords with the Notice of Hearing documents by registered mail, and that she served the Landlords with copies of her documentary evidence by placing the documents in the Landlords' deposit box at their place of business on April 16, 2013. The female Landlord testified that she did not receive the Tenant's documentary evidence. Therefore, the matter was adjourned to allow the Tenant to re-serve the Landlords by registered mail. The female Landlord stated that the Landlords would be out of the country from May 17 until June 12, 2013, and requested that the Hearing be reconvened after June 15, 2013.

Due to an administrative error, the matter was rescheduled for May 24, 2013. Nevertheless, the Landlords signed into the Hearing, and the female Landlord stated that she was calling from her car on the way to the airport. The Tenant stated that she had re-served the Landlords with her documentary evidence by registered mail sent April 24, 2013. The Tenant provided the receipt and tracking number in evidence. The Landlord had served the Tenant with their documentary evidence on May 16, 2013. The Tenant asked to be allowed an opportunity to provide rebuttal evidence. I adjourned the matter again and ordered that the Tenant could provide rebuttal evidence but that no further documentary evidence would be allowed, by either party.

The parties gave affirmed testimony at the Hearings.

Issue to be Decided

- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act for loss of use of the kitchen?

Background and Evidence

The parties referred to two previous Applications for Dispute Resolution with respect to this tenancy:

1. Tenant's Application filed December 15, 2010, for compensation for damage or loss; an Order that the Landlord comply with the Act; Orders for emergency and regular repairs; an Order that the Landlord provide services or facilities required by law; and a rent reduction. The matter was heard on January 12, 2011 and a Decision reached on March 8, 2011. The Tenant was provided with an award for loss of use of the kitchen for three months, at the rate of \$178.60 per month, and an award for loss of quiet enjoyment for nine months at the rate of \$2.61 per day. The total monetary award was \$1,240.50. The Landlord was also ordered to make certain repairs as soon as possible: complete painting under windows in the two bedrooms; replace blinds in two bedrooms; complete repair and painting of kitchen ceiling; and complete all repairs to the bathroom including re-caulking around tub taps.
2. Landlords' Application filed November 15, 2012, for an Order of Possession and Monetary Order for unpaid November rent and loss of income for December, 2012. The matter was heard on December 17, 2012 and a Decision reached on December 19, 2012. It was determined that the Tenant vacated the rental unit on December 2, 2012, and therefore the Landlords' application for an Order of Possession was withdrawn. The Landlords' application for unpaid rent and loss of revenue was granted and the Landlords were provided with a Monetary Order in the amount of \$2,052.56, which included the \$50.00 filing fee.

The Tenant provided documentary evidence that she provided the Landlords with a money order in the amount of \$362.06 on January 29, 2013. This amount was calculated as follows:

Landlords' award of December 19, 2012:	\$2,052.56
Less Tenant's award of March 8, 2011:	-\$1,240.50
Less security deposit paid:	<u>\$450.00</u>
Total	\$362.06

The Landlords provided documentary evidence that they received the Tenant's payment of \$362.06.

The Tenant stated that the Landlords did not comply with the repair Order of March 8, 2011, and therefore she seeks compensation in the amount of \$3,750.60 (\$178.60 per month x 21 months).

The co-tenant stated that the Landlords have stalled this process twice now. He stated that the Tenant dropped off their evidence package at the Landlords' place of business on April 16, 2013, but the Landlords lied when they stated that they didn't receive it. The Tenant stated that the Landlords were not being truthful when they stated that they were going to be leaving the country and therefore would not be available for a hearing until June 15, 2013. She stated that they were at the rental property on May 25 and 26, 2013. Her co-tenant testified that he saw the Landlords at Tim Hortons on June 2, 2013.

The Landlords stated that their travel plans changed, but that they were in England for one week.

The Landlords testified that their attempts to repair the damages were thwarted because the Tenant refused to allow them access in order to do the repairs.

The Tenant stated that on October 29, 2012, she asked the Landlords' resident manager (the Landlords' witness KB) when he was going to finish the repairs and he stated that he had no intention of doing so. She stated that she put her notice to end the tenancy in KB's deposit box, but that KB told her she had to give it to the Landlords.

The Tenant stated that there have been a few resident managers since her tenancy started and that every time she spoke with the resident managers about the required repairs, they came up with excuses; for example, the roof had to be repaired before the kitchen ceiling could be repaired. She stated that she sent two letters to the previous resident manager and also spoke to KB many times.

The Landlords' witness KB testified that he repaired the kitchen ceiling in December, 2012. He stated that in 2011 he painted the rental unit and replaced the windows and that in 2012, he replaced the blinds. However, after being questioned by the male Landlord, he stated that he didn't remember for sure when he did the repairs or what repairs were done.

The Landlords' witness AR testified that she has worked for the Landlords for about 3 years. She stated that KB painted, fixed the kitchen ceiling and changed a door in December 2012. She stated that they also put in new fences and decks at the rental

unit and that the Tenant was always complaining about lots of things. AR testified that the Tenant always “put us off” by requiring notice before they could do repairs. On being questioned by the Landlords, she stated that she could not remember for certain when the repairs were done.

The male Landlord stated that the ceiling, tub surround and tub taps were repaired in January, 2011, and that a leak from the bathroom caused the ceiling in the kitchen to require more repairs. He alleged that the Tenant’s children caused the tub to overflow and damage the ceiling. The Landlords provided copies of invoices for the repairs.

The Tenant stated that the damage was not caused by her children, but was because the bath tub taps were installed incorrectly by the Landlords’ employees. The Tenant denied that any of the repair orders were completed by the Landlords.

Analysis

This is the Tenant’s application for compensation and therefore it is the Tenant’s responsibility to provide sufficient evidence to prove their claim, on the balance of probabilities.

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.

Section 7(2) of the Act provides that a person claiming compensation for damage or loss **must** take reasonable steps to mitigate or minimize the loss.

In this case, I find that the Tenant did not take reasonable steps to minimize her loss, as required in Section 7(2) of the Act. The repair orders were made in March of 2011. The Tenant did not file her application for compensation until February of 2013. The Tenant’s remedy would have been to file an Application for compensation as soon as possible if the Landlord did not comply with the repair orders in a reasonable amount of time (for example, 2 or 3 months). This would have minimized her losses.

Therefore, I find that the Tenant is not entitled to compensation under Section 67 of the Act because she failed to mitigate her loss in 2011.

Conclusion

The Tenant’s application is **dismissed**.

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: June 21, 2013

Residential Tenancy Branch