



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANMED INVESTMENTS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNDC, ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking monetary compensation for loss of value to the tenancy. The tenant was also seeking an order to force the landlord to comply with the Act, an order to force the landlord to complete necessary repairs, and an order for emergency repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation under section 67 of the Act?

Is the tenant entitled to an order to force the landlord to complete necessary repairs and emergency repairs?

Background and Evidence

The tenancy began on July 1, 2012 and the rent is \$1,100.00. A security deposit of \$600.00 was paid.

The tenant testified that, when the tenancy began, the landlord made commitments to make various repairs and enhancements to the suite, including providing new flooring and repairs to the bathroom. However, although some of the promised renovations were completed, the new flooring was not installed in the kitchen and bathroom. The tenant testified that the unit was also in need of repairs to the bathroom to deal with mould and water leaks. The tenant testified that this work has been in process for

months and is still not fully completed. The tenant made reference to photos that were placed in evidence.

The tenant testified that there was also an issue with not having enough hot water. According to the tenant, on February 2, 2013, there was an issue with the boiler and the tenant was left without hot water for most of the day before the problem was fixed. The tenant testified that, since that occurred, they have had a chronic problem with the hot water running out. The tenant kept a written record of issues with the suite by date, including notations of when the hot water was not available.

In addition to the above, the tenant stated that the landlord was too slow in responding to repair requests and often responded by telling the tenant that, if they were not happy with the rental premises, they should just move out. The tenant stated that there was evidence that the landlord had also entered the suite without permission to take the photos that the landlord had submitted into evidence.

The tenant is seeking orders to force the landlord to complete the repairs, install the promised flooring and to look into the water problem. The tenant is also seeking a Monetary Order for \$5,000.00 as compensation.

The landlord testified that most of the promised enhancements were completed, and the landlord committed to installing the new linoleum in the kitchen and bathroom by the end of August 2013.

In regard to the bathroom, the landlord acknowledged that it is not completed but pointed out that the initial repairs were done promptly, but it was discovered later on that there were additional issues, such as a leaking toilet from the suite above, that required extensive remediation which ended up taking much longer than expected. The landlord testified that only some painting and a replacement of the vanity kick-plate now need to be done. The landlord made a commitment to complete the final tasks within 2 weeks.

In regard to the tenant's complaint about the lack of hot water, the landlord stated that this rental unit is on the same boiler system as all of the other apartments in the building and apparently no other tenants are having similar problems. The landlord testified that it is possible in peak periods that the boiler capacity may reach its limit. However, the landlord pointed out that a new boiler was recently installed and it meets the building code and provides sufficient hot water for the number of units.

Notwithstanding these facts, the landlord agreed to have a licensed plumber look into the tenant's complaint and made a commitment to follow any recommendations made and will also provide a copy of the plumber's report to the tenant, within the next two weeks.

In regard to the statements made by the tenant that the landlord failed to respond promptly to complaints, and that the landlord entered the suite without the tenant's knowledge to take the photos, the landlord denied these allegations. The landlord testified that he took the photos in question during his attendance in the suite to oversee the bathroom repairs. The landlord testified that he is aware that a landlord is required to give the tenant 24 hours written notice prior to entering the suite, unless the tenant agrees to allow access without this. The landlord stated that he would continue to follow the Act in this regard.

Analysis

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement. (My emphasis)

Given the above, I find that, an arbitrator is authorized to make determinations and orders to enforce the Act or the tenancy agreement. I find that both the Act and the contact terms are involved in the dispute before me on this application.

I find that section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

In addition to the above, I find that there were apparently certain contractual promises made by the landlord to provide new flooring, as part of the tenancy agreement.

I find that the landlord is required to complete repairs to the bathroom and to ensure adequate hot water, to the standard imposed by housing bylaws, under section 32 of the Residential Tenancy Act.

As the landlord has committed to finalizing repairs to the bathroom within the following two weeks, I find that this portion of the dispute has been satisfied.

I further find that the landlord's agreement to engage a licensed plumber to look into the tenant's complaint about the lack of hot water and to furnish the tenant's with the report within two weeks of this hearing, also satisfies that portion of the dispute.

With respect to accessing the suite, I find that Section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Notice that the landlord will be accessing the unit must include the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property and the Act permits a landlord to inspect a rental unit monthly in accordance with subsection (1) (b).

I note that the landlord has made a commitment to follow the Act with respect to accessing the suite and I find that this resolves this portion of the dispute.

In regard to the flooring issue, I find that the landlord is required to finish installing the new linoleum in the kitchen and bathroom under the terms of the tenancy agreement. As the landlord has agreed to install the linoleum in both the kitchen and the bathroom by August 31, 2013, I find that this resolves that portion of the dispute.

With respect to the conflicting testimony about whether or not the landlord has responded to the tenant's complaints in a timely and appropriate manner, I find that this portion of the dispute has remained unresolved and therefore I find it necessary to order that the parties communicate only in written form in order to formalize the process and create a record.

If the tenant intends to make a complaint or request of the landlord, the tenant must send the landlord a written message containing the details of complaints or requests and the date and the landlord must send a written acknowledgement and/or a written status report to the tenant in response to any complaints or requests.

Accordingly I accept the landlord's commitment that, within two weeks, the landlord will have finished repairs to the bathroom and will have given the tenants a written report from a licensed professional in response to their complaint about lack of hot water.

I accept the landlord's commitment that, by August 31, 2013, the landlord will have completed the installation of the new linoleum installed in the kitchen and bathroom as promised.

I further accept that this landlord is aware that, pursuant to the Act, 24 hours written notice is required to access the unit, unless the tenant gives permission or there is a genuine emergency situation.

Based on the evidence and testimony, I find that the above matters under dispute in the tenant's application have been adequately resolved .

In regard to the handling of complaints, I hereby order that, the parties must restrict all communications about complaints or repair matters to written form and refrain from verbal discussions if possible.

The tenant's application seeking orders for repairs and a monetary order is hereby dismissed with leave to reapply if necessary.

Conclusion

The tenant is partly successful in the application. Most issues are satisfactorily resolved and an order was issued restricting the parties to written communications with regard to complaints and repairs in future. Therefore, the tenant's application is dismissed with leave to reapply.

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: July 23, 2013

Residential Tenancy Branch