



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, RP, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs; for authorization to reduce the rent for services or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for 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 oral evidence, to ask questions, and to make submissions to me.

The Landlord submitted documents and a CD to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

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Preliminary Matter

The Landlord and the Tenant agree that sometime prior to June 06, 2013 the Landlord attempted to have the Tenant sign a document in which they mutually agreed to end the tenancy and that the Tenant refused to sign the document. The Tenant stated that it was this document that he was attempting to set aside when he filed this Application for Dispute Resolution on June 06, 2013.

As the Landlord had not served the Tenant with a Notice to End Tenancy for Cause prior to June 06, 2013, I find that the Tenant did not need to apply to set aside a Notice to End Tenancy on June 06, 2013. In reaching this conclusion, I specifically note that the Tenant had not signed a mutual agreement to end tenancy prior to this date and that he was not compelled to vacate the rental unit on the basis of the mutual agreement that the Landlord was attempting to have him sign. I therefore decline to consider the Tenant's application to set aside a Notice to End Tenancy for Cause, as he had not received a Notice to End Tenancy for Cause when he made this application.

The Landlord and the Tenant agree that the Landlord did serve the Tenant with a Notice to End Tenancy for Cause on June 14, 2013, which is after the Tenant served the Landlord with this Application for Dispute Resolution. The Tenant stated that he did not file an Application for Dispute Resolution seeking to set aside this Notice to End Tenancy for Cause, as he thought it would be resolved at these proceedings. I find it unreasonable for the Tenant to conclude that this hearing would relate to an issue that arose after the Application for Dispute Resolution was filed and I find it inappropriate to amend his Application for Dispute Resolution to include an application to set aside the Notice to End Tenancy that was served on June 14, 2013.

Issue(s) to be Decided

Is there a need for an Order requiring the Landlord to make repairs and is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Tenant stated that the temperature in his oven is inconsistent. He does not recall when he first reported this to the Landlord, although he believes it was about 3-4 months ago. He stated that he reported it in writing on June 09, 2013, when he provided the Landlord with this Application for Dispute Resolution.

The Landlord stated that the Tenant did report a problem with the oven in May of 2013; that he inspected the oven shortly after receiving the report; and that he determined the oven was functioning properly.

The Tenant stated that two stove elements only work periodically. He does not recall when he first reported this to the Landlord, although he believes it was about 3-4 months ago. He stated that he reported it in writing on June 09, 2013, when he provided the Landlord with this Application for Dispute Resolution.

The Landlord stated that the Tenant did report a problem with the elements in May of 2013; that he inspected the elements shortly after receiving the report; that he determined the oven was functioning properly; and that in spite of his determination that the elements worked properly he told the Tenant he would reimburse him for the cost of new elements if the Tenant wished to purchase new elements. The Tenant agrees that the Landlord did offer to reimburse him for the cost of the new elements.

The Tenant stated that the water in the toilet tank runs continually. He does not recall when he first reported this to the Landlord, although he believes it was about one year ago. He stated that he reported the toilet was leaking, in writing, on June 09, 2013, when he provided the Landlord with this Application for Dispute Resolution.

The Landlord stated that he was not aware there was a problem with the toilet until he was served with the Application for Dispute Resolution. He stated that he attempted to inspect the toilet on June 25, 2013 but the Tenant would not permit him to view the toilet without 48 hours notice. The Tenant agreed that the Landlord attempted to inspect the rental unit on June 25, 2013 but the Tenant would not permit entry without proper notice.

The Tenant stated that the water in the bathtub does not drain properly. He stated that the problem was repaired on February 17, 2012; that the repair only lasted a few weeks and then the bathtub backed up again; that the problem has never been repaired again; that he has repeatedly informed the Landlord of the problem; that the bathtub has not drained properly for the past six months; that he has verbally reported the problem to the Landlord during the past six months; and that he reported the problem in writing on June 09, 2013.

The Landlord stated that the bathtub and the washing machine share a common drain; that the drain becomes clogged with lint from the washing machine; that the drain periodically needs to be cleaned to ensure proper drainage; that the drain was cleared on May 16, 2012; that the drain was cleared on February 17, 2012; and that he was not aware there was another problem with drainage until he was served with the Application for Dispute Resolution. He stated that he attempted to inspect the bathtub on June 25, 2013 but the Tenant would not permit him to view the bathtub without 48 hours notice. The Tenant agreed that the Landlord attempted to inspect the rental unit on June 25, 2013 but the Tenant would not permit entry without proper notice.

The Landlord submitted an invoice to show the drain was cleared on February 17, 2012. The Landlord submitted an invoice to show the drain was inspected on May 16, 2012, although it is not clear from the invoice that the drain was cleared on that date.

The Tenant alleges that the bathtub backed up every time they used the shower; that the water took almost 24 hours to drain; and that the water smelled of sewage.

The Landlord and the Tenant agree that on June 06, 2013 the Tenant provided the Landlord with a letter, in which the Tenant stated that it had "been great living here". The Landlord contends that this shows the deficiencies in the rental unit were minimal.

Analysis

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss, not on the person who is denying the loss. In these circumstances, the burden of proving that there were deficiencies with the

rental unit rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that the oven and stove elements in the rental unit did not work properly. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that the stove/oven did not work properly, such as a statement from an appliance technician, and by the absence of evidence that refutes the Landlord's testimony that the stove/oven appeared to work properly.

As the Tenant has failed to establish there is a problem with the stove/oven, I dismiss the Tenant's application for an order requiring the Landlord to repair the stove/oven and for financial compensation arising from the alleged deficiency.

I find that the Tenant has submitted insufficient evidence to show that he reported a problem with the toilet prior to filing this Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that he reported the problem prior to June 09, 2013 and by the absence of evidence that refutes the Landlord's testimony that the problem was not reported prior to June 09, 2013.

As the Tenant has failed to establish the problem was reported prior to June 09, 2013, I find that Tenant is not entitled to financial compensation for the inconvenience of living with the problem during this tenancy. Now that the Landlord is aware of the problem, I find that the Landlord is obligated to inspect the toilet and determine if repairs are necessary.

On the basis of the undisputed evidence, I find that the bathtub drain periodically requires clearing to ensure the tub drains properly. I find that this is the responsibility of the Landlord. On the basis of the testimony of both parties and documents submitted in evidence, I find that the Landlord has cleared the drain on at least once occasion when it became clogged.

On the basis of the undisputed evidence, I find that a problem with the bathtub drain was reported to the Landlord when the Landlord was served with this Application for Dispute Resolution and that the Landlord has not yet remedied that problem. I find that the Landlord should have provided proper notice to enter the rental unit and repaired the problem immediately after receiving notice of the problem. As the Landlord has not yet remedied the problem, I find that the Tenant is entitled to compensation for the inconvenience of living with a poorly draining bathtub during the period between June 10, 2013 and July 31, 2013.

I find that the evidence shows the drains were clogged in May of 2012. I find that the Landlord has submitted insufficient evidence to show that the drains were cleared on or after May of 2012. In reaching this conclusion I was influenced by the Tenant's testimony that they were not cleared after February of 2012 and by the invoice, dated May 16, 2012, in which the technician reports that he could not access the rental unit. I

presume this means that the drain was not cleared on that date. I therefore find that the Tenant is also entitled to compensation for living with a poorly draining bathtub for the period between May of 2012 and June 10, 2013.

It is difficult to determine how much compensation the Tenant is entitled to, as it is difficult to determine how inconvenient the problem was for the Tenant. I find it difficult to believe that the drainage was as problematic as the Tenant described, as I find it unlikely that the Tenant would not have been more insistent that the drain be cleared if it backed up every time the bathtub was used and if it took almost 24 hours to drain.

In determining that the drainage problem was not as severe as the Tenant described, I was heavily influenced by the letter the Tenant provided the Landlord on June 06, 2013, in which the Tenant stated that it had "been great living here". I find it unlikely that the Tenant would have made this comment if the bathtub truly backed up every time it was used and it took approximately 24 hours to drain.

Regardless, I find that even periodic backups in a bathtub are inconvenient, and I find that the Tenant is entitled to compensation of \$200.00 for that inconvenience. I hereby authorize the Tenant to reduce his monthly rent payment for July of 2013, which has not yet been paid, by \$200.00 in full compensation for that inconvenience. I further Order the Landlord to clear the drain immediately, if that has not recently been done, and to clear the drain in the future within 24 hours of receiving written notice that the drain is blocked, or as soon as is practicable.

Conclusion

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the \$50.00 filing fee. I hereby authorize the Tenant to reduce his monthly rent payment for July of 2013 by another \$50.00 in compensation for the filing fee.

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 04, 2013

Residential Tenancy Branch

