



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

LAT, MNDC, MNR, RR, O, SS, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order to force the landlord to complete repairs and a rent reduction for loss of value to the tenancy. The tenant was also seeking an order to permit the tenant to serve documents in a different way than required by the Act. The tenant has requested an order to change the locks.

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 comply with the Act?

Background and Evidence

The tenancy began in July 2013 and the rent is \$2,250.00. A security deposit of \$1,125.00 was paid.

The tenant testified that, before the tenancy began, the landlord made promises that certain improvements and repairs would be made to the rental unit. The tenant testified that the tenant had requested, as part of the tenancy agreement, the following repairs and improvements:

- the unit must be properly cleaned,
- the blinds be removed, repaired, cleaned and/or replaced,
- the unit be repainted, including the front entry door,
- garbage and equipment strewn about the yard be removed,
- the landlord's older washer and dryer be taken off site to permit the tenant to install their own machines,
- the carpets be cleaned and one bedroom carpet stained with paint be replaced with a new carpet,
- the damaged kitchen island be removed and repaired to ensure safety,
- the damaged screens be repaired and the missing screens be replaced,
- loose and broken tiles in the ceramic flooring be repaired,
- the stove knob be fixed, and
- the leaking refrigerator be fixed or replaced.

According to the tenant, they repeatedly asked the landlord to comply with the Act by conducting a move-in condition inspection and completing the written report so that the deficiencies in the rental unit could be documented and addressed. However, the landlord ignored the requests and failed to do the move-in condition inspection or complete any report. According to the tenants, the landlord verbally agreed to complete numerous repairs and improvements prior to or shortly after their move-in date.

The tenant testified that the landlord had neglected to give the tenant a copy of their tenancy agreement and did not provide emergency contact information for the tenant to reach the landlord which made it difficult for them to bring their concerns to the landlord.

The landlord's daughter who spoke at the hearing, on behalf of the landlord, explained that they did not conduct a formal move-in inspection nor fill out an inspection report because all of the tenant's initial concerns were fully dealt with and the tenant's were satisfied with the unit. The landlord testified that they were unaware that a move-in condition inspection report as a requirement of the Act. The landlord agreed to immediately provide the tenant with a copy of their tenancy agreement, as required by the Act.

In addition to the repairs and improvements agreed-upon by the landlord, as listed above, the tenants stated that they also made additional requests for repairs after moving into the unit. The tenants complained that during the tenancy shortly after moving in, they experienced two separate floods. The tenant testified that they have since discovered the presence of mould and mildew on some of the walls.

The landlord stated that they were not aware of any mould issues. The landlord agreed to look into this allegation by inspecting the affected areas.

The tenant testified that the blinds were removed and they had asked that the landlord repair and replace them. The tenant testified that this was not completed as the landlord apparently had trouble finding the correct sizes for the blinds.

The landlord's daughter argued that they removed the blinds at the tenant's request and then re-installed them, also at the tenant's request. The landlord agreed to investigate the tenant's complaints about the blinds.

With respect to the cleaning issue, the tenant stated that the unit was not cleaned when they moved in and that they had to complete cleaning on their own. The tenant testified that they also had to insist that some of the carpets be cleaned before the landlord finally did the work. The tenant stated that the landlord has never replaced the paint-spattered bedroom carpet as promised during their verbal discussions.

The landlord's daughter argued that the rental unit was completely clean when the tenants arrived and pointed out that all of the carpets were shampooed, some more than once, by professional cleaners.

According to the landlord, no promise was ever made to replace the paint-spattered bedroom carpet, only that it be cleaned. The landlord stated that they felt the tenant's actions in demanding improvements after agreeing to take the rental unit "as is" were unfair.

With respect to the issue of repainting the unit, the tenant testified that paint surfaces in the interior of the rental unit need to be redone. The tenant testified that paint on the entry door is coming off and there are streaks on walls in the unit.

The landlord disputed that they had ever agreed to repaint the entire unit and pointed out that the tenant only requested that the garage, 2 bedrooms and the 2 bathrooms be painted. The landlord stated that the complaints about deficiencies in the painting have no merit.

The tenant testified that they had repeatedly asked the landlord to clean up all of the garbage and equipment strewn about the yard, but nothing has been done and the tenant is now requesting an order to force the landlord to do this work.

The landlord agreed to take care of the garbage removal, but pointed out that they will refuse to clean up items that were placed on the property by the tenant.

In regard to the removal of the landlord's laundry appliances, the tenant's stated that it was their expectation that the landlord remove the old washer and dryer from the site, not store them in the garage.

The landlord argued that the tenant's request was simply that the machines be taken out and the tenant's laundry appliances be moved in, and they complied with this request. According to the landlord, they had never agreed to completely remove the machines from the property. The landlord pointed out that the appliances belong to the rental unit and thus would naturally be stored there, as the landlord does not have an alternate storage area and would never have agreed to transport the machines off site.

In regard to the carpeting, the tenant testified that they discussed one of the bedrooms with the landlord since the carpets were badly marred with spilled paint. According to the tenant, the landlord agreed to replace that one carpet. The tenant testified that the landlord has never fulfilled this promise.

The landlord's daughter testified that no such promise was ever made and pointed out that the tenants were merely assured that the carpets would be fully cleaned and this was done. The landlord testified that the tenant only demanded a replacement carpet after they had already agreed to rent the unit as is and moved in.

With respect to the damaged kitchen island, the tenant stated that the cabinets were not functional and posed a danger to the family as it was unstable and could not be safely used. The tenant testified that they asked that the island be removed as it was of no use in its current state. The tenant testified that they did expect it to either be repaired or replaced, but the landlord did nothing.

The landlord disputed the tenant's version of this matter and stated that the tenant had merely requested that the island be removed and they did so. According to the landlord there was no discussion about the island being repaired, and in fact, the landlord discarded it altogether.

In regard to the screens, the tenant testified that this issue was discussed with the landlord and he had readily committed to repairing and replacing the screens. However, the tenant stated that in the two months since they moved in, no effort was made by the landlord to fix the damaged screens or replace the missing screens.

The landlord did not explain why the screens had not been attended to. The landlord testified that they are willing to make repairs to the screens, and after some discussion, did agree to furnish replacement screens for the ones that are missing.

In regard to the repairs to the loose and broken ceramic tiles, the tenant stated that the landlord did replace and secure loose tiles as promised. However, the tenant stated that the landlord has not removed cracked tiles that put the family at risk of cuts on bare feet. The tenant insists that this be done and considers it to be of major concern.

The landlord testified that they felt that they had already addressed the problem satisfactorily. The landlord agreed to take a look at the areas of concern and take appropriate action if warranted.

In regard to the tenant's concern about the stove knob, the tenant testified that one of the stove knobs was broken and the landlord replaced it. However the replacement part does not function properly and the tenant wants this rectified.

The landlord agreed to examine the problem and take action as necessary.

The tenant testified that the problems with the refrigerator were resolved as the landlord replaced it with a new refrigerator.

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, I am authorized as an arbitrator to make determinations and orders to enforce both the Act and the tenancy agreement. I find that the issues before me in this application are based on both Act and the tenancy contract terms.

I find that section 32 of the Act provides that a landlord must 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. Given this section of the Act, I find that the landlord's responsibilities include responding promptly to investigate complaints and requests for repairs.

The Act requires that a rental unit be reasonably clean and in good repair when the tenant takes occupation.

Section 23 of the Act states that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The Act also requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection and once it is completed, both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. (My emphasis).

I find that, in this instance, the landlord did not comply with the Act by failing to arrange a move in condition inspection. I find that, because of this, the landlord is not able to properly defend against the the tenant's allegations that the unit was not in a clean condition when they moved in. I accept the tenant's testimony that the unit required some cleaning by the tenant and I will therefore consider whether the tenant is entitled to some compensation for the cleaning.

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Although the tenant has not defined the exact amount of compensation being claimed for each issue, I find that the claim for cleaning costs has met the test for damages and I therefore find that the tenant is entitled to be compensated \$60.00 for the additional cleaning.

With respect to the controversy relating to the blinds, I find that the landlord is required under the agreement and the Act to restore all of the blinds to working condition. Had the landlord not agreed to rectify the problems with the blinds, I would have found the tenant entitled to an order against the landlord. However, the landlord has consented to deal with the problem and the tenant is at liberty to seek further dispute resolution, if the landlord fails to follow through.

In regard to the issue of repainting, I find that the parties did agree at the outset of the tenancy to have the unit repainted, including the entry door. I find that portions of the unit were not repainted or were not completely repainted in a professional manner. I find that the tenant is entitled to an order requiring the landlord to examine the areas that the tenant feels are in need of re-painting and take appropriate action where deemed necessary. If the parties do not agree on repainting after this process, the tenant is at liberty to make an application for dispute resolution and provide sufficient evidence to support obtaining an order or compensation with respect to this matter.

In regard to the removal of garbage and equipment in the yard, I accept that the landlord will comply with section 32 of the Act by removing this refuse. Should this not occur, the tenant is at liberty to make a further application for dispute resolution to obtain an order to complete the work or for compensation.

In regard to the dispute over the on-site storage of the landlord's washer and dryer, I find that, on a balance of probabilities, the landlord did not consent to remove these appliances completely from the property. However, I find that the tenant is at liberty to arrange their own safe storage of these items off site, at their own expense, if they do not want them to be stored in the garage. I find that the tenants must return and reinstall the old washer and dryer prior to vacating the rental unit at the end of their tenancy.

In regard to the damaged bedroom carpet, I find that, in the absence of photographs or written communications to confirm the exact state of the carpet, I lack adequate evidence to make an informed determination on this matter. Accordingly, I find it necessary to order that the landlord look into the state of this particular carpet and assess whether it should be replaced. If the parties remain in disagreement thereafter, I find that the tenant may seek an order on this matter through dispute resolution based on providing sufficient evidence to support the claim.

With respect to the kitchen island removal, I find that all parties agreed that this cabinetry should not be left in the kitchen. I find that the tenant's allegation that the unit was deficient is supported by the fact that the landlord chose to discard it after its removal.

In this instance, I find that the two parties had freely contracted for a tenancy in which a kitchen island was included in the rent. I find that this feature was found not to be functional after the tenancy began, due to the condition.

I find that a landlord has the right to remove a service or facility that was part of the contract, but only in the manner described below.

Section 27 of the Act states a landlord must not terminate or restrict any service or facility if it is essential to the tenant's use of the rental unit. However a service or facility, other than an essential or material one may be restricted or terminated provided that the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. (my emphasis)

I find that the landlord is not required to repair and return the kitchen island as it has been permanently discarded and it is not practical for the landlord to be forced to purchase a replacement at this point. I therefore find that the tenancy no longer includes a kitchen island and the tenant is entitled to be compensated through a retroactive rent abatement of 1% for the loss. This amounts to a reduction in rent of \$22.50 per month, dating back to July 1, 2013. I find that the tenant is currently entitled to 3 months retroactive compensation for the months of July, August and September, 2013, in the amount of \$67.50. I find that the current rent will therefore be reduced to \$2,227.50 per month and will continue at this rate unless, and until, a valid and compliant Notice of Rent Increase is issued and takes effect under section 42 of the Act.

In regard to the issue of the screens, I find that, regardless of any agreements made, the landlord is required under section 32 of the Act to at least repair the damaged screens, which was not done. For this reason, I find that the tenant is entitled to compensation of \$45.00, representing \$15.00 per month for July, August and September, 2013.

That being said, I accept that that the landlord has made a commitment to repair the existing screens and replace the missing screens. I find that, should the landlord failed to provide these screens in good condition by April 1, 2014, the tenant is at liberty to have the job done and seek further compensation through an application for dispute resolution.

In regard to the cracked tiles, I find that the elimination of cracked ceramic tiles would be a responsibility of the landlord under section 32 of the Act, particularly if the tiles are in an area through which the occupants need to walk. I find it appropriate to order that the landlord inspect and remediate the damaged flooring without delay.

In regard to the complaint about the replacement stove knob, I accept the landlord's testimony that they will look into this to ensure that the knob is functioning properly.

In regard to the flooding incidents that occurred in the past, I find that the tenant is entitled to some compensation for devalued tenancy due to the inconvenience and restrictions caused by the leakage. I set this amount at \$100.00.

In regard to the allegations of mould and mildew, I find that the tenant has not offered sufficient proof to support the allegation that mould exists. However, as an allegation has been lodged by the tenant, I find that the landlord is required under the Act to inspect the affected areas and, if any suspicion of mould is evident, to engage a qualified mould expert to make recommendations or take other action as found necessary.

I find that the monthly rental rate for the rental unit is reduced from \$2,250.00 per month to \$2,227.50 per month, starting on October 1, 2013, reflecting the permanent loss of the kitchen island.

I find that the tenant is entitled to \$322.50 total compensation comprised of \$60.00 for the additional cleaning at the start of the tenancy, \$67.50 for 3 months retroactive compensation for the loss of the kitchen island, \$45.00 for impaired use and absence of window screens for 3 months, \$100.00 for devalued tenancy due to flooding and the \$50.00 cost of this application.

I hereby order that the tenant reduce the next monthly payment of \$2,227.50 rent owed to the landlord for October by \$322.50 as a one-time lump-sum abatement, leaving the rent owed for October as \$1,905.00.

The portions of the tenant's application seeking an order to remove the laundry machines stored in the garage and an order permitting the tenant to change the locks were not sufficiently proven to be warranted and are, therefore, dismissed without leave to reapply.

With respect to the remainder of the application, I find that the landlord agreed to:

- assess and rectify the controversy relating to the blinds,
- review the areas in the unit that the tenant feels need to be repainted,
- ensure removal of garbage and equipment in the yard,

- look into the need and possibility of replacing the paint damaged carpet in the bedroom,
- repair the existing screens and replace missing screens,
- examine the stove knob, and
- inspect for signs of mould and take appropriate action using a qualified mould expert if mould is found.

Based on the evidence and the landlord's willingness to take action to deal with the above, I dismiss the above portions of the tenant's application, with leave to reapply, should the above matters not be resolved to the tenant's satisfaction.

I further order that the landlord immediately inspect and repair the cracked tiles without delay to ensure the safety of the tenants.

Finally, I hereby order that the landlord provide a copy of the tenancy agreement to the tenant forthwith.

Conclusion

The tenant is partly successful in the application. Most issues are satisfactorily resolved, a monetary order is granted as a one-time rent retro-active rent abatement and a continuing rent abatement has been granted for devalued tenancy.

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: September 09, 2013

Residential Tenancy Branch

