Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding North Arm Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This hearing was convened to address a claim by the tenant for an order authorizing her to reduce her rent and recover the filing fee paid to bring her application. No one appeared for the corporate landlord although the tenant provided evidence that the corporate landlord was served with the notice of hearing and a copy of her amended application for dispute resolution via registered mail on December 2, but A.H. appeared for the respondent E.V.Z.

A.H. acknowledged that E.V.Z. had received a copy of the tenant's amended application for dispute resolution and had knowledge of the claim against her. A.H. read a prepared statement from E.V.Z. in which she argued that E.V.Z. was improperly named as a respondent as she was merely an agent of the landlord. I advised A.H. at the hearing that the definition of "landlord" under the Act included agents and that I considered E.V.H. to be a proper respondent to this action. A.H. had no further contribution to the hearing. A.H. did not request an adjournment to permit E.V.H. to participate in the hearing and I received no written request for an adjournment.

I note that E.V.H. submitted a letter on November 12 in which she repeated her argument that she was not properly named as a respondent, alleged that she did not receive a copy of the application for dispute resolution and stated that because she had not received a copy of that application within 3 days of the date of the Hearing Letter, she considered the application to have been abandoned. As A.H. acknowledged that E.V.H. had received a copy of the amended application, I find that she had knowledge of the claim against her and as the tenant clearly intended to proceed with her claim, I find that the application has not been abandoned.

As both E.V.Z. and the corporate landlord had knowledge of the claim against them and instructions about how to access the hearing and chose not to participate, the hearing proceeded in their absence.

Issues to be Decided

Is the tenant entitled to a rent reduction as claimed?

Background and Evidence

The tenant's undisputed evidence is as follows. The bathtub in the rental unit is an old style free standing bathtub which uses a pipe to attach a device from which a shower curtain is hung. On August 13, the tenant emailed E.V.Z. to advise that the hoop from which the curtain hangs was broken and requested that it be repaired along with a number of other issues. On August 14, the landlord's agent arrived and removed the pipe and hoop to hold the shower curtain. The tenant inquired about the progress of the repair on September 4, 25, October 1 and 8 and on October 16 she sent a letter advising that if the shower was not repaired by October 30, she would pursue legal action through the Residential Tenancy Branch. The October 16 letter also proposed a $5.00 per day rental rebate for each day she was without a shower. The pipe and hoop were replaced on or about October 28.

The tenant acknowledged that the hoop had broken on a previous occasion during her tenancy and that after the first repair, E.V.Z. had advised that the part was no longer commercially available and would need to be custom built if a future replacement was required. The tenant submitted a copy of an email from E.V.Z. in which she advised that she considered the second breakage to be the fault of the tenant.

The tenant seeks an award of $375.00 which represents $5.00 for each of the 75 days that she was unable to use the shower. She also seeks to recover the $50.00 cost of the filing fee paid to bring her application.

Analysis

Although E.V.Z. and the corporate landlord (hereinafter referred to collectively as the "landlord") did not appear at the hearing to present evidence, I have considered their position to be well expressed in the email exchanges between the tenant and E.V.Z. It is clear that E.V.Z. believes that the tenant was responsible for the hoop having been broken and it is also clear that the replacement part had to be custom built.

The landlord undertook responsibility for the repair of the hoop and removed the pipe and hoop on August 14, which prevented the tenant from using the shower until it was replaced. I am not satisfied on the evidence that the tenant was responsible for the breakage and I find that the landlord had an obligation to perform the repair as quickly

as possible in order to restore the use of the shower to the tenant. I accept that the only means by which the landlord could effect that repair was to have the part custom built, but I have insufficient evidence before me that the landlord pursued the repair as diligently as the repair took 2 ½ months, which on its face appears to be an unreasonably long period.

I find that the tenant is entitled to compensation for the period in which she was unable to use the shower and I find her claim for $5.00 per day to be reasonable. I note that although in one of her emails E.V.Z. suggested that the tenant had agreed not to pursue legal action if the shower was repaired by October 30 and had thereby disentitled herself to compensation, it is very likely that in that communication the tenant was simply referring to pursuing an order compelling the landlord to perform repairs. I find that the tenant is not barred from seeking compensation and I find that she is entitled to an award of $375.00. I further find that she is entitled to recover the $50.00 filing fee and I award her a total of $425.00.

Conclusion

The tenant is awarded $425.00 and may deduct this amount from future rental payments due to the landlord.

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: December 20, 2013

Residential Tenancy Branch