



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR

Introduction

This hearing dealt with an application by the tenant for: a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; an order that the landlord make repairs; an order allowing the tenant to reduce rent; and a monetary order for the tenant's RTB filing fee.

Both the tenant and the landlord's representative attended the hearing and gave affirmed evidence. The landlord's representative said that she did not receive the Notice of a Dispute Resolution Hearing and the tenant's Application for Dispute Resolution until January 7, 2014, nine days in advance of the hearing. Section 59 of the Act specifies that an Application for Dispute Resolution must be given to the other party within three days of making it. The tenant made his Application for Dispute Resolution on December 17, 2013 and so should have given it to the landlord on or before December 20, 2013.

The landlord's representative asserted that she had not had time to produce documentary evidence in response to the tenant's application. She requested that the tenant's Application be dismissed or that the hearing be adjourned to provide her with time to produce documentary evidence.

I accept the undisputed evidence of the landlord's representative and find that the tenant did not serve his Application for Dispute Resolution on the landlord until January 7, 2014, and this was 21 days after he made the Application. Although the tenant was late in serving his Application for Dispute Resolution on the landlord, I find that the landlord was not prejudiced by the delay. The landlord had nine days prior to the hearing to investigate the tenant's claims. For that reason, I deny the landlord's request for an adjournment or a dismissal without hearing the tenant's claims.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation and, if so, in what amount?

Is the tenant entitled to an order that the landlord make repairs?

Is the tenant entitled to an order allowing the tenant to make reduced rent payments?

Background and Evidence

The parties entered into a tenancy agreement in 2003. The parties gave evidence regarding the following claims:

Claim for money owed or compensation:

The tenant claims \$4,800.00 in money owed or compensation. He was asked to explain his claim for money owed or compensation, and to provide evidence in support of this claim. The tenant asserted that the common areas of the building are not kept as clean as they were at the beginning of his tenancy.

The tenant has various ongoing health problems including diabetes and arthritis. He has experienced coughing and a nose bleed. He recently underwent a chest x-ray. He appears to believe there is a connection between the state of the building and his health problems. The tenant was asked whether a doctor had told him there was a connection between the state of the building and his health problems. The tenant said a doctor had told him he must have “a mold-free environment”. The tenant did not give evidence regarding the identity of the doctor or the context for the doctor’s advice.

The tenant said there was a six-month delay before the landlord replaced a faulty refrigerator in his rental unit and, as a result, he lost food due to spoilage including meat, eggs, milk, soya milk, and lettuce. The tenant said he could not estimate the value of the food lost. He said that the caretaker attempted to fix his fridge twice in the six-month period between his first complaint and when the fridge was replaced, however the fridge did not stay cold enough after the repairs to keep food fresh.

The landlord’s representative said that the landlord’s policy is to replace defective refrigerators promptly. However, she did not have specific information at the time of the hearing regarding when the tenant complained and when his refrigerator was replaced.

The tenant said it took the contractors hired by the landlord six months to complete the replacement of the windows in his suite and he and his wife experienced inconvenience as a result. They had to move their belongings from the bedroom to the living room while the windows were being replaced.

The tenant said he experiences harassment and abuse at the building. He said there are drug pushers and “ladies of the night” in the building and frequent police visits.

Claim for Repairs:

The tenant identified three things he says the landlord has refused to repair in his suite: the patio door, the door between his suite and the hallway, and mold in the bathroom.

The patio door

The tenant states that a cold wind enters the suite from around the edges of the sliding glass patio door, because there is not proper insulation around the door. The tenant did not provide a photograph of the patio door.

The landlord’s representative said she believes the weather stripping in the suite was examined by the building manager, but she was not sure when.

The suite door to the hallway

The tenant states that dust from the hallway enters the suite. The tenant says there is weather-stripping but it should be re-done. He says there is adequate weather-stripping under the door but not on the sides or at the top. The tenant did not provide a photograph of the suite door.

The landlord’s representative said that stripping was put in place at the bottom of the suite door.

Mold in the bathroom

The tenant states that while the landlord replaced the bathroom taps, there “may be some mold left” under the bathroom sink and countertop. He did not provide any photographs or other documentary evidence of mold in the bathroom.

The landlord's representative said that a company came in to test for mold in 2010 and nothing was found in the tenant's suite. The tenant denied that anyone came in to his suite to test for mold.

Rent reduction for repairs, services or facilities agreed upon but not provided

The tenant cited additional personal expenses due to his health problems as a reason his rent should be reduced.

Asked whether there were any repairs, services, or facilities that were agreed upon or formerly provided and are not currently provided, the tenant identified three services or facilities: the community kitchen, the swimming pool, and weekend staff at the building. He also said that the common areas of the building, such as the hallway carpets, are not kept as clean as they once were.

Community kitchen

The tenant said the community kitchen is no longer available for tenants to use. He said he and his wife used to use it when they had family over.

The landlord's representative said that the community kitchen is still available for tenants' use but they must pre-book it.

Swimming pool

The tenant states the swimming pool at the complex was closed a couple of years ago. He said his grandchildren used the pool at least twice during his tenancy, between 2003 and 2011.

The landlord's representative agrees that the swimming was closed. She said there was consultation with the tenants and it was agreed that the pool be closed due to safety concerns. The tenant replied that he was unaware of consultations with the tenants.

Staff on weekends

The tenant states that there are no longer staff available to speak to on the weekends.

The landlord's representative states that there are staff on the weekends from 8 a.m. until 4 p.m., however they are often busy with their duties and not in the

office. She said there are no staff on statutory holidays however there is an emergency phone number posted at the office for tenants' use.

Analysis

Claim for money or compensation:

Where a tenant applies for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, the tenant must show a breach of one or more of the Act, Regulation, or tenancy agreement, and a resulting loss.

In this case, the tenant has complained of inadequate cleanliness in the common areas of the building. He has indicated he believes this has impacted his health. The onus is on the tenant to prove a direct relationship between lack of cleanliness in the common areas and his health issues. The tenant has not provided proof of such a relationship, and for that reason I dismiss this claim.

The tenant has complained that the landlord's delay in replacing his refrigerator led to a loss of food. I accept the tenant's evidence that although the landlord twice attempted to repair his refrigerator; he was without a properly functioning refrigerator for six months and this resulted in some spoiled food. I therefore find that the landlord breached Section 32 of the Act, and this resulted in a loss for the tenant. The tenant did not quantify his loss and **I therefore award a nominal amount of \$40.00 which the tenant may deduct from his rent.**

The tenant did not provide evidence that the delay in replacing the windows in his suite was a breach that resulted in any damages or loss to the tenant. This claim is therefore denied. Similarly, the tenant did not provide evidence that other tenants, who he asserted were drug pushers or "ladies of the night", breached his right to quiet enjoyment of his rental unit. This claim is also denied.

Claim for an order that the landlord make repairs

Patio door

I accept the tenant's evidence that the patio door may not have adequate weather stripping. **I therefore order the landlord to inspect the weather stripping around the patio door of the rental unit within two weeks of receiving this decision, and to make prompt repairs if the weather stripping is inadequate to prevent wind from entering the rental unit from around the edges of the patio door.**

Hallway door

I accept the tenant's evidence that the weather stripping around the door between the suite and the hallway may be inadequate to prevent dust from entering the suite from the hallway. **I therefore order the landlord to inspect the weather stripping (if any) on the sides and top of the hallway door, and to make prompt repairs if necessary to prevent dust from entering the rental unit around the edges of the hallway door.**

Mold in suite bathroom

Based on the tenant's evidence that there "may be" some mold in the bathroom, he is apparently not certain himself whether a problem exists. This evidence is insufficient to warrant an order for repairs.

Claim for reduced rent

In order to establish a claim for a reduction in rent pursuant to Section 27 of the Act, a tenant must prove that the landlord has terminated or restricted a service or facility and that termination or restriction has resulted in a reduction in the value of the tenancy agreement.

In this case, I am not convinced on a balance of probabilities that either the community kitchen or access to weekend building staff have been terminated or restricted since the tenant began his tenancy. It is therefore not necessary that I consider whether the loss of these services or facility would reduce the value of the tenancy agreement.

In the matter of the swimming pool, the landlord agrees that the swimming pool has been closed since the tenant began his tenancy. However, the tenant's evidence was that his grandchildren only used the pool on about two occasions while visiting him. Based on this infrequent use, I find that the loss of the swimming pool has not reduced the value of the tenant's tenancy agreement. For this reason, the tenant is not entitled to a reduction in his rent.

The tenant has had partial success in his claim, and he is entitled to recoup half his RTB filing fee from the landlord. I authorize the tenant to deduct \$25.00 from his rent as reimbursement of half his filing fee.

The total amount the tenant may deduct from his rent is therefore \$40.00 for lost food and \$25.00 for half his filing fee, for a total one-time deduction of \$65.00.

Conclusion

I find the tenant is entitled to deduct \$65.00 from his rent, on a one-time basis. I order the landlord to inspect and, if necessary, repair the weather stripping around the tenant's patio door and hallway door.

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: January 21, 2014

Residential Tenancy Branch