



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, RR, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord did not raise any issues regarding service of the application or the tenant's evidence. The landlord submitted no documentary evidence.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's oral and written evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The parties were given instructions at the beginning of the hearing that they were to allow the other party the opportunity to testify without interruption during the hearing. The parties were advised that although they would most likely disagree with everything the other party said, they were to make a note of that disagreement in order to respond during their portion of the hearing.

Despite these instructions, the landlord began interrupting the proceedings almost immediately with comments and remarks.

I cautioned the landlord that the continued interruptions would result in him being placed in the mute mode; however the interruptions continued throughout the hearing, until the landlord was placed on mute, but allowed to listen, directly after his testimony, pursuant to Section 8.7 of the Rules of Procedure.

After his testimony and 41 minutes into the hearing, the landlord exited the telephone conference call hearing and did not return.

Preliminary matter#2-The landlord began the hearing with a request for an adjournment as he was sick and in bed, according to the landlord. The landlord presented no evidence of such and he failed to have an agent attend the hearing on his behalf. Due to the serious allegations contained in the tenant's application, her request for emergency repairs, and to the fact that her application for dispute resolution was filed on November 28, 2013, I declined the landlord's request.

Issue(s) to be Decided

1. Is the tenant entitled to an order requiring the landlord to make repairs and emergency repairs?
2. Is the tenant entitled to a reduction in her monthly rent and to monetary compensation?

Background and Evidence

The written tenancy agreement supplied by the tenant shows that this tenancy began on February 1, 2011, monthly rent is \$1350, and the tenant paid a security deposit of \$675 at the beginning of the tenancy.

The rental unit is in a home with two other rental units rented by the landlord, with the tenant living on the main floor, other tenants living in the basement level, and other tenants living on the second floor above the tenants.

In addition to her request for an order for the landlord to make repairs to the rental unit and for a reduction in monthly rent, the tenant's monetary claim is \$7200, comprised of a loss of quiet enjoyment since September 2013, for \$2000, enduring a rodent infestation since February 2011, for \$5000, and for increased hydro bills for \$200.

The tenant's relevant documentary evidence included photographs showing dead mice/rats in mouse traps, mouse feces in several areas of the rental unit, text message communication between the tenant and the landlord and/or his son concerning noise from other tenants in the residential property and the rodent infestation, comparative hydro billings, and a witness statement.

Loss of quiet enjoyment-

The tenant submitted that the tenants in the basement level are noisy, quite disruptive to her enjoyment of her rental unit, and are often partying late into the night. The tenant submitted that she has notified the landlord of the excessive noise, but that the landlord has failed to properly address the issue.

The tenant also submitted that these tenants are smoking both tobacco cigarettes and marijuana, causing herself and her children to become quite ill.

Rodent infestation-

The tenant submitted that she has endured a rodent infestation since the beginning of the tenancy and that the landlord has failed to take appropriate steps to remedy the problem, such as repairing the holes and outlets.

The tenant contended that the landlord's response was to provide the tenant with poison, but that the poison was dangerous for her children. The tenant stated that the landlord has yet to hire an exterminator to provide for treatment.

Increased hydro-

The tenant submitted that the hydro bill for the entire residential property, which includes the three rental units rented by the landlord, comes to the tenant, which is then divided by the other tenants. The tenant submitted that her hydro bill has increased tremendously since the tenant in the upper unit has moved into the rental unit, for which she should be compensated.

In response to my question, the tenant acknowledged understanding that she was responsible for her own utilities, but that the landlord required that one of the tenants put the hydro bill in their name, to be divided among the others.

The tenant stated that although she does not receive a copy of the natural gas bill, she does pay for her portion.

In response, the landlord submitted the following testimony:

Loss of quiet enjoyment-

The landlord submitted that he made the other tenants leave and that the tenant is lying about the noise problem.

The landlord said the tenant is complaining about nothing.

Rodent infestation-

The landlord denied there were rodent problems in the residential property, stating that the downstairs had no mice and there is nothing wrong with the electrical outlets.

The landlord contended that he had an exterminator attend the rental unit.

Increased hydro-

The landlord denied that other tenants were using excessive hydro and that the tenant was the only one with a gas stove.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Loss of quiet enjoyment-

A breach of quiet enjoyment includes when a tenant's right to enjoy their premise in peace and without unreasonable disturbance. Ongoing and unreasonable noise could result in the loss of a tenant's right to quiet enjoyment.

A landlord is required to balance and protect the rights of each tenant. While a landlord would normally not be held responsible for the actions of other tenants, a landlord must take reasonable steps to address and correct a situation where the landlord is aware that one tenant is unreasonably disturbing another tenant.

Section 47 of the *Act* provides that a landlord may end a tenancy by issuing a 1 Month Notice to End Tenancy for Cause. One of several grounds that can be identified as a basis to end a tenancy is the ground that the tenant has significantly interfered with or unreasonably disturbed another occupant.

From the evidence provided by the tenant I am satisfied that there have been multiple noise complaints and complaints regarding smoking to the landlord. From the evidence, the tenant sent multiple text messages to the landlord, in September 2013, October 2013, November and December 2013, and the tenant testified, without dispute, that she has notified the landlord in January 2014. On at least one occasion the tenant has also called the police to deal with the noise bylaw infractions, according to her undisputed evidence.

I also do not find it reasonable that the landlord expects the tenant here to resolve her own difficulties with the other tenants, given the nature of the complaints and the police complaint.

I find that the landlord has not taken appropriate and reasonable steps to address the verified complaints of the tenant.

Pursuant to section 62(1)(b) of the *Act*, I find that it is reasonable to order that the landlord take immediate measures to address and correct the issue of noise and smoking disturbances experienced by the tenant. This should include issuing immediate warning letters and if the problem does not resolve quickly, may require that a notice to end tenancy be issued to the offending tenants pursuant to section 47 of the *Act*.

With respect to the tenant's request for monetary compensation for a loss of their quiet enjoyment and a subsequent devaluation of their tenancy, as I have found that the landlord's lack of taking effective corrective steps have led to the tenant's loss of quiet enjoyment, I find it reasonable that the tenant is entitled compensation for a devaluation of her tenancy.

Residential Tenancy Policy Guideline 6 states the determination of the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Additionally the arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises.

I find on a balance of probabilities that the ongoing noise disruptions and smoking from the tenants in the basement suite have led to a devaluation of the tenancy for the tenant. I find a reasonable amount of compensation for that devaluation from noise, sleep and smoking disturbance to be \$100 per month, from September, the proven date of the 1st notice to the landlord, to the date of hearing.

I therefore find the tenant has established a monetary claim of \$500 (\$100 for September, October, November, December 2013, and January 2014) for a loss in the value of the tenancy for those months.

The tenant may satisfy her monetary award by deducting the amount of \$500 from her next or a future month's payments of rent in satisfaction of the award. The tenant should inform the landlord of her intention to redeem this amount when making a reduced monthly rent payment.

Rodent infestation-

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

Section 33 requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

In the case before me, I do not find that the issue of a rodent infestation is of the nature of an emergency repair, as defined by the Act; however I find that the tenant has proven through her photographic and text message evidence that she has endured a rodent infestation of a serious nature. Although the tenant said the rodent infestation has been ongoing since the beginning of the tenancy, the tenant did not submit any proof of notifying the landlord prior to December 2, 2013

I find the landlord failed to prove that he has taken any course of action in remedying the rodent infestation and I find this insufficient response by the landlord has caused the tenant to suffer a loss of use and enjoyment of her rental unit. I accept that the rodent infestation diminished the value of the tenancy by \$250 per month and I award the tenant compensation of \$250 per month for loss of enjoyment of the rental unit starting December 2013 and January 2014, the month of the hearing, for a total amount of \$500.

The tenant's monetary award of \$500 may be satisfied by withholding the amount of \$500 from the next or a future month's rent payment. The tenant should inform the landlord of her intention to redeem this amount when making a reduced monthly rent payment.

I also order the landlord to hire a licensed, professional pest control company, no later than February 15, 2013, to correct the rodent infestation as recommended by the licensed, professional pest control company and to issue a written report when the process has been completed and that the rental unit is free from rodents.

Until the completion of the full extermination, I grant the tenant a continuing rent abatement of \$250 per month and I further authorize the tenant to reduce future monthly rent payable by \$250 until such time as the licensed, professional company has issued its final report certifying that the process of extermination of the rodents is complete.

I order the landlord to provide the licensed, professional pest control company's written report to the tenant. Upon receipt of the written report verifying completion of the extermination of the rodents, the tenant will be obligated to resume payment of the full monthly rent starting the month following receipt of the written report. Example: if the landlord supplies the report to the tenant on March 2, 2014, the tenant's rent for March is reduced by \$250, but the tenant would have to pay the full amount of rent payable for April 2014.

If the tenant is not satisfied with the extermination being complete and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that he has complied with this Decision.

Increased hydro-

In the case before me, electrical usage for the three rental units in the residential property is measured by one meter, and that the tenant before me, although responsible for her own utilities, is sent the hydro bill, with the expectation that she is responsible for collecting the other tenants' portion.

I find the landlord's expectation that a tenant to be responsible for splitting and collecting the cost of hydro consumed in a separate self contained suite with other tenants of the premises to be an unreasonable and unconscionable and therefore an unenforceable term.

Having found the above, I hereby order the landlord to immediately transfer the hydro account for the residential property into the landlord's name no later than February 15, 2014. The tenant is at liberty to provide a copy of this Decision to the hydro company to ensure the hydro account is put in the property owner's name in accordance with this order.

As there is no written agreement as to the share of the hydro for each of the rental suites in the residential property, the landlord is directed to make such mutually agreeable arrangements with each set of tenants, with the said agreement to be in written form for enforcement purposes.

I also order that the landlord submit a copy of the hydro bills and any other utility bills to the tenant for her inspection prior to having to pay for her portion.

In light of the above, I have not awarded the tenant monetary compensation for an increased hydro bill pending the landlord's compliance with the above orders. If the problem persists and the tenant believes she is still paying in excess of her fair share of the hydro, the tenant is at liberty to reapply for monetary compensation.

I allow the tenant recovery of her filing fee of \$100, as her application has been successful. The tenant is authorized to satisfy this amount by deducting \$100 from her next or a future month's rent. The tenant should inform the landlord of her intention to redeem this amount when making a reduced monthly rent payment.

Conclusion

The tenant was successful with this application.

The landlord has been ordered to hire a licensed, professional pest control company no later than February 15, 2014, to remedy and correct the rodent infestation in the tenant's rental unit.

The tenant has been granted monetary compensation to date in the amount of \$1100, for a devaluation of the tenancy for \$500, a retroactive rent abatement of \$500, and recovery of the filing fee for \$100, which may be satisfied by deducting this amount from her next or a future month's rent payment.

The tenant has been granted a reduction in ongoing monthly rent of \$250 and is authorized to reduce her monthly rent as directed above.

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* and is being mailed to both the applicant and the respondent.

Dated: February 03, 2014

Residential Tenancy Branch

