



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, RP, and O

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has applied to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; and for "other".

The Tenant stated that sometime in January of 2014 she left a copy of the Application for Dispute Resolution and the Notice of Hearing in the Landlord's mail box, although she cannot recall the exact date. The Tenant stated that about 5-7 days after she delivered the Application for Dispute Resolution, she left an amended Application for Dispute Resolution in the Landlord's mail box.

On the basis of the Tenant's testimony and the fact that the Landlord submitted evidence in response to the Tenant's Application for Dispute Resolution, I find that the Landlord has been served with the Application for Dispute Resolution and Notice of Hearing; however the Landlord did not appear at the hearing.

On February 12, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Tenant stated that the Landlord served her with those documents. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings and will be considered when determining this matter.

At the outset of the hearing the Tenant stated that she did not submit any evidence to the Residential Tenancy Branch and that she did not serve any evidence to the Landlord. Much later in the hearing the Tenant stated that she faxed documents she wishes to rely upon as evidence to the Residential Tenancy Branch on February 20, 2014.

When the Tenant was asked if the Landlord was served with the documents she faxed to the Residential Tenancy Branch on February 20, 2014, she stated that they were served to the Landlord sometime in January, when she served the Landlord with the

amended Application for Dispute Resolution. The Tenant was advised that one of the documents recently submitted to the Residential Tenancy Branch was dated February 19, 2014. When she was asked how she could have served that document in January she stated that she did not serve these documents to the Landlord at any time. As the documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

On at least four occasions the Tenant was advised that the documents she submitted to the Residential Tenancy Branch on February 20, 2014 were not being accepted as evidence because they were not served to the Landlord, yet she repeatedly asked whether or not those documents would be considered. When the Tenant raised concerns about those documents for a fifth time, she was advised that the decision to exclude the documents had been made and the reasons for excluding them would be explained in a written decision.

At the conclusion of the hearing the Tenant was given the opportunity to raise relevant issues that had not been discussed up to that point in the hearing. On at least three occasions the Tenant was advised that the only issues that could be discussed at the hearing were issues outlined on her Application for Dispute Resolution, however she repeatedly attempted to discuss issues not relevant to those claims. On at least three occasions the Tenant was advised that she would not be permitted to repeat testimony that had already been provided, however she frequently attempted to repeat testimony she had already provided. The hearing was concluded once I determined that the Tenant was not prepared to present additional relevant evidence.

Issue(s) to be Decided

Should a Notice to End Tenancy for Unpaid Rent be set aside; is there a need to issue an Order requiring the Landlord to make repairs to the rental unit; and is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Tenant stated that on December 10, 2013 she found a Ten Day Notice to End Tenancy taped to her door, which was not submitted in evidence. She stated that she did not have a copy of the Notice with her at the time of the hearing and she does not know the effective date of the Notice. In her written submission the Tenant stated that she found the Notice to End Tenancy posted on her door on January 03, 2014.

The Landlord submitted a Proof of Service of Ten Day Notice to End Tenancy in which the Landlord declared that the Notice was posted on the Tenant's door on January 03, 2014.

The Tenant stated that this tenancy began on October 01, 2013 and that she still has possession of the rental unit, although she is not actually living there. The Tenant stated that she agreed to pay monthly rent of \$500.00; that she paid \$500.00 in rent for

October; that she paid \$250.00 in rent for November; and that she has paid no rent for December, January, or February.

The Tenant stated that she has been bitten by bugs during this tenancy; that she and a friend have observed what they both believe are bedbugs; and that her doctor has told her that the bites she received were likely made by bedbugs. She stated that she reported the problem to the Landlord on November 13, 2013 or November 15, 2013.

In his written submission the Landlord declared that in late December the Tenant reported being bitten by something; that there has never been a problem with bedbugs in the residential complex prior to this tenancy; and that no other occupants of the residential complex have reported a problem with bedbugs. He stated that if there is a flea infestation or bedbug infestation in the rental unit, it was likely caused by the Tenant, her cat, or one of the Tenant's guests.

The Tenant stated that before entering into this tenancy agreement that Landlord informed her that the electricity in one bedroom and in ½ of the living room was not working; that the Landlord told her he was attempting to identify the source of the problem and intended to rectify the problem as soon as possible; and that the Landlord told her she would have to use extension cords until the problem was identified. This is consistent with the information in the Landlord's written submission.

The Tenant stated that the Landlord encouraged her to move into a different rental unit which was vacant and ready for occupancy but she wanted to move into this particular rental unit. This is consistent with the information in the Landlord's written submission.

The Tenant stated that the electrical problem has never been fixed. In his written submission the Landlord declared that he spent several hours attempting to identify the problem with the wiring; that on October 26, 2013 he contacted an electrician who unsuccessfully attempted to diagnose the problem the following week and that there was a delay in the electrician returning to the job site due to the electrician's schedule and a family emergency. I note that the Landlord does not declare that the electrical problem has been repaired.

The Landlord submitted an invoice from an electrical company, dated November 26, 2013, which indicates electrical repairs were made to a rental unit that is not the subject of this dispute.

The Landlord stated that the Tenant's rent for December was reduced by \$375.00 in compensation for the inconvenience of being without power.

The Tenant stated that the cover on the breaker box has been missing since the beginning of the tenancy; that she reported the problem to the Landlord; and that the cover is still missing.

The Tenant stated that the smoke detector in the rental unit has been removed; that she reported the problem to the Landlord; and that the smoke detector has never been replaced.

The Tenant stated that the screens on the windows are bent and in need of replacement and that a small, steady stream of water is constantly flowing from the kitchen faucet.

The Tenant stated that a small, steady stream of water is constantly flowing from the kitchen faucet.

The Tenant stated that the ceiling is leaking in two places in the bathroom and in one place in the kitchen, although she does not know why.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay the rent for January of 2014 and that the Landlord therefore has grounds to end this tenancy pursuant to section 46 of the *Residential Tenancy Act (Act)*. On the basis of the written submissions of both the Landlord and the Tenant, I find that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on January 03, 2014. I can therefore find no reason to set aside the Notice to End Tenancy that was served to the Tenant and I dismiss her application to set aside this Notice.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

It is important to note that I did not find the Tenant to be a particularly reliable witness. While I do not believe that the Tenant was deliberately attempting to mislead me, I have significant doubts about the accuracy of some of her testimony. My assessment of the Tenant's credibility was based on:

- The Tenant initially stated that she did not submit any evidence to the Residential Tenancy Branch and subsequently stated that she faxed documents to the Residential Tenancy Branch on the morning of the hearing
- The Tenant initially stated that she served the aforementioned evidence to the Landlord sometime in January
- My finding that it is highly unlikely that the Tenant would have corrected her testimony regarding service of her evidence if I had not pointed out the improbability of that testimony

- The Tenant's own admission that she has recently been hospitalized and that her "thoughts are just coming back"
- The Tenant's testimony that she received the Ten Day Notice to End Tenancy on December 10, 2013, which contradicts her written declaration that she received it on January 03, 2014 and the Landlord's Proof of Service, which indicates it was received on January 03, 2014.

As the Tenant has not been able to provide details about dates of service of the Application for Dispute Resolution and the amended Application for Dispute Resolution and because some of her testimony has been inaccurate, I have serious concerns about relying on her uncorroborated testimony in circumstances where the Landlord has disputed her claim.

I find that the Tenant has submitted insufficient evidence to establish that there are bedbugs in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that there are bedbugs or that refutes the Landlord's testimony that there has never been a problem with bedbugs in the rental unit. I note that the Tenant has submitted no evidence from a medical professional to corroborate her testimony that the bites she received are consistent with bedbugs and she has submitted no evidence from a pest control technician to corroborate her claim that there are bedbugs in the rental unit.

As there has been no evidence of bedbugs in the residential complex prior to this tenancy, I find it entirely possible that if there are bedbugs in the rental unit, they were introduced into the unit by the Tenant. I therefore cannot conclude that the Landlord is obligated to treat the rental unit for bedbugs. I do caution the Landlord, however, that the Landlord has an obligation to the other occupants of the residential complex and that the Landlord may want to have the unit inspected to determine if there are bedbugs in an attempt to prevent a potential bedbug infestation in the complex.

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant clearly understood there was a problem with the electricity in a portion of the rental unit and that she would need to use extension cords until such time as the problem could be identified and rectified.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the electrical problem has still not been rectified. As the Tenant was informed that the problem would be rectified, I find that the Landlord is obligated to provide this service. I therefore Order the Landlord to ensure that power is restored to the entire rental unit by February 28, 2014.

In the event that the power is not restored to the entire rental unit by February 28, 2014, I authorize the Tenant to reduce her monthly rent by \$50.00, effective March 01, 2014, and to reduce each subsequent monthly rent payment by \$50.00 until such time as power has been fully restored.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the cover of the breaker box is missing. I find it reasonable to conclude that for safety reasons, a breaker box should be covered. I therefore Order the Landlord to ensure that the breaker box is compliant with appropriate building codes by February 28, 2014.

In the event that breaker box is not compliant with appropriate building codes by February 28, 2014, I authorize the Tenant to reduce her monthly rent by \$10.00, effective March 01, 2014, and to reduce each subsequent monthly rent payment by \$10.00 until such time as the breaker box is compliant with building codes.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the rental unit is not equipped with a smoke detector. I find it reasonable to conclude that for safety reasons, a smoke detector should be installed in the rental unit. I therefore Order the Landlord to ensure that a functional smoke detector is installed in the rental unit by February 28, 2014.

In the event a smoke detector is not installed by February 28, 2014, I authorize the Tenant to reduce her monthly rent by \$25.00, effective March 01, 2014, and to reduce each subsequent monthly rent payment by \$25.00 until such time as the smoke detector is installed.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the window screens at this rental unit are damaged. I find that the Tenant has submitted insufficient evidence to establish that section 32(1) of the *Act* requires the Landlord to repair the screens. The Tenant has not established that the condition of the screens makes the rental unit unsuitable for occupation or that the absence of fully functional screens renders the unit non-compliant with health, safety and housing standards required by law.

Although I accept that the screens are damaged, there is no evidence to show that the screens have deteriorated since the Tenant took possession of the rental unit. I therefore cannot conclude that the Landlord is obligated to repair the screens.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the kitchen faucet does not turn off properly. I find that it is reasonable for a Tenant to assume that the faucets in a rental unit will function as they are intended to function. I find that if a faucet has stopped functioning properly the Landlord has an obligation to repair the faucet or to reduce the rent by an amount that is

equivalent to the reduced value of the tenancy, in accordance with section 27(2) of the *Act*. I therefore Order the Landlord to repair the kitchen faucet by February 28, 2014.

In the event that faucet is not repaired by February 28, 2014, I authorize the Tenant to reduce her monthly rent by \$5.00, effective March 01, 2014, and to reduce each subsequent monthly rent payment by \$5.00 until such time as the faucet has been repaired.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that water is leaking into the ceiling of the rental unit in three locations. I find that it is reasonable for a Tenant to assume that the rental unit will not leak. I find that if the Landlord is obligated to repair the leak or reduce the rent by an amount that is equivalent to the reduced value of the tenancy, in accordance with section 27(2) of the *Act*. I therefore Order the Landlord to investigate the source of the leak and make any repairs necessary to stop the leak by March 15, 2014.

In the event that necessary repairs are not complete by March 15, 2014, I authorize the Tenant to reduce her monthly rent by \$20.00, effective April 01, 2014, and to reduce each subsequent monthly rent payment by \$20.00 until such time as necessary repairs have been made.

On the basis of the Landlord's written submission, I find that the rent for December was reduced by \$375.00 in compensation for the inconvenience of being without power in a portion of the rental unit. Given that the Tenant understood she would be without power for a period of time when she entered into this tenancy, I find that the Tenant has been generously compensated for this inconvenience. I find that the reduced rent of \$375.00 is also sufficient compensation for any other of the alleged deficiencies in the rental unit and I do not find that further compensation is warranted.

Conclusion

In the event the Landlord does not comply with the repair Orders outlined in this decision, the Tenant may reduce her monthly rent in accordance with the amounts noted in the decision.

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: February 21, 2014

Residential Tenancy Branch

