



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, ERP, RP, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution.

On December 30, 2013 the Tenant applied for a monetary Order for the cost of emergency repairs; for authority to reduce the rent; and to recover the filing fee from the Landlord for the cost of filing an Application for Dispute Resolution. The Tenant stated that she attached the Application for Dispute Resolution and Notice of Hearing to the Landlord's door on January 02, 2014. The Landlord acknowledged receipt of these documents.

On January 02, 2014 the Tenant submitted an amended Application for Dispute Resolution to the Residential Tenancy Branch, in which she withdrew the application for a monetary Order for the cost of emergency repairs; she added an application for an Order requiring the Landlord to make repairs to the rental unit; she added an application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement ; and she added an application for an Order requiring the Landlord to make repairs.

The Tenant stated that she attached the amended Application for Dispute Resolution to the Landlord's door on January 03, 2014. The Landlord acknowledged receipt of the amended Application and it was accepted as evidence for these proceedings.

On January 10, 2014 the Tenant submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Tenant stated that she attached these documents to the Landlord's door on January 10, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 14, 2014 the Tenant submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Tenant stated that she attached these documents to the Landlord's door on January 14, 2014. The Landlord

acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 03, 2014 the Tenant submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Tenant stated that she attached these documents to the Landlord's door on February 03, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 06, 2014 the Landlord submitted documents she wishes to rely upon as evidence to the Residential Tenancy Branch. The Landlord stated that he attached these documents to the Tenant's door on February 06, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matters

The Tenant stated that she submitted a significant amount of evidence for a previous dispute resolution proceeding and she believed that this evidence would be considered at these proceedings. She was advised that only evidence submitted in support of this Application for Dispute Resolution would be considered at this hearing.

The Landlord indicated that he wished to discuss his reasons for wishing to end the tenancy at this hearing. He was advised that the Landlord's desire to end the tenancy cannot be considered at this hearing, as this hearing Landlord has not filed an Application for Dispute Resolution in which he has applied for an Order of Possession nor has the Tenant filed an application to set aside a Notice to End Tenancy.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit; is the Tenant entitled to reduce the rent as a result of the need for repairs; and is the Tenant entitled to compensation as a result of the need for repairs?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began prior to the Landlord purchasing the property on December 01, 2005 and that the Tenant is currently required to pay monthly rent of \$440.00.

At the outset of the hearing the Tenant clarified that she did not in a hotel as a result of the alleged deficiencies with the rental unit and she did not have to vacate the rental

unit as a result of those deficiencies. Although she has claimed compensation for a full rent refund of \$440.00 and hotel costs of \$400.00, she acknowledged that she is simply seeking compensation for the loss of the quiet enjoyment of the rental unit as a result of the Landlord's failure to repair the deficiencies in accordance with their settlement agreement of October 30, 2013. She stated that she would like the compensation to be in the form of a rent reduction.

The Landlord and the Tenant agree that this tenancy was the subject of a previous dispute resolution hearing on October 30, 2013, which was settled by mutual consent.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and replace the "older opening windows". The Tenant is seeking compensation for being without new windows, as the windows have not yet been replaced.

The Landlord stated that he ordered two replacement windows on December 04, 2013; that the windows have not yet arrived; and that he intends to install the windows as soon as he receives them. The Landlord submitted a letter from a building supply company that corroborates this testimony.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and make necessary repairs to the leaking bathtub faucet and bathtub surround. The Tenant is seeking compensation as the repairs were not completed in a timely manner.

The Landlord and the Tenant agree that the Landlord began the repairs to the bathtub/faucet in December when the Tenant was away from the rental unit for a period of time; that the Tenant returned home on December 27, 2013; and that the repairs were not completed until January 03, 2014. The Landlord stated that the repairs could not be fully completed while the Tenant was away in December, as the Landlord needed her to move some property out of her bedroom so the Landlord could access the plumbing in one wall.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that the Landlord would paint the interior of the rental unit. The Tenant is seeking compensation as the painting was not completed in a timely manner.

The Landlord and the Tenant agreed that the Tenant moved her property from the bedroom to the living room "sometime in November" to facilitate the painting of the bedroom, and that the bedroom was painted in November. The Tenant stated that she moved her furniture from the living room to the bedroom to facilitate the painting of the living room, although it is not clear to me whether she moved this property on November 26, 2013 or December 10, 2013. The parties agree that the painting was completed prior to her return on December 27, 2013.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and make necessary repairs to the "leaking roof". The Tenant is seeking compensation as the roof has not been repaired.

The Landlord stated that he inspected the roof and that he does not believe it is leaking. He stated that the roof was replaced approximately two years ago. He stated that there are stains on the ceiling but he believes these are the result of condensation in the rental unit, and not a leaking roof.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and make necessary repairs to the thermostat. The Tenant is seeking compensation as the thermostat is still not functioning properly.

The Landlord stated that he inspected the thermostat and he does not believe it is in need of repair.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and make necessary repairs to the oven. The Tenant is seeking compensation as the oven is overheating.

The Landlord stated that he inspected the oven and he does not believe it is in need of repair.

The Landlord and the Tenant agree that one of the terms of their settlement agreement was that within 30 days the landlord would investigate and make necessary repairs to the smoke detector. The Tenant is seeking compensation as the thermostat is not working.

The Landlord stated that he has not inspected the smoke detector to determine if it is working.

The Tenant is seeking compensation, in the amount of \$53.00, for the cost of hydro consumed during the month of December. She stated that she was not staying in the rental unit for about half of December; that when she left the rental unit she set the thermostat at 15 degrees; and when she returned on December 27, 2013 she found the thermostat had been moved to 30 degrees. The Tenant stated that she pays equal monthly hydro payments of \$53.00 and she believes the Landlord should compensate her for the cost of one monthly hydro payment.

The Landlord agrees that he turned the thermostat to 30 degrees because he wanted the paint to dry properly.

Analysis

On the basis of the undisputed evidence, I find that on October 30, 2013 the Landlord agreed to investigate and replace windows if he deemed it necessary and that on December 04, 2013 the Landlord ordered two replacement windows. I find that the Landlord complied with his agreement to investigate the need to replace the windows within 30 days.

I find that the Landlord did not comply with his agreement to replace the windows within 30 days of October 30, 2013; that he did not even order the two replacement windows until December 04, 2013; and that there has been a delivery delay that has interfered with the Landlord's ability to replace the windows. Although the delay in replacing the windows is not entirely the fault of the Landlord, I find that he contributed to the delay by not ordering the windows in a timely manner.

I hereby Order the Landlord to replace these windows as soon as is practicable. In the event that the Landlord has not replaced the windows by February 28, 2014, I authorize the Tenant to reduce her monthly rent payment by \$10.00, effective March 01, 2014, and to reduce the monthly rent by \$10.00 for each subsequent month until such time as the windows have been replaced.

In compensation for being without the new windows, I also authorize the Tenant to reduce her next monthly rent payment by \$30.00 in compensation for this breach of her right to the quiet enjoyment of the rental unit during the months of December of 2013, January of 2014, and February of 2014.

I find that the Landlord did not comply with the agreement to make repairs to the bathtub and faucet within 30 days of October 30, 2013. Although the Tenant contributed to the delay because she was not available in December to move property in a bedroom, I find that this delay would not have occurred if the Landlord complied with his agreement to repair the bathtub/faucet by November 30, 2013.

As the bathtub/faucet was repaired on January 03, 2014, I find there is no need to order the Landlord to make those repairs. In compensation for the delay to the bathtub/faucet repairs I authorize the Tenant to reduce her next monthly rent payment by \$30.00 in compensation for this breach of her right to the quiet enjoyment of the rental unit during the month of December of 2013. I have awarded greater compensation for this breach, simply because the Tenant was without a bathtub for a period of time, which is a significantly greater inconvenience than the other deficiencies.

As the Landlord did not agree to paint the rental unit within 30 days; the Landlord needed to wait for the Tenant to move personal property to facilitate painting; and the painting was completed by December 27, 2013, I find that the Landlord painted the rental unit in a reasonably timely manner. I therefore find that the Tenant is not entitled to compensation for the delay in painting.

While I accept that the Landlord acted reasonably by turning the thermostat to 30 degrees if he believed that would facilitate the drying of the paint, I find that is a cost of painting and the Tenant is not obligated to pay that cost. Although I am not able to determine the increased heating costs in December, I find the claim of \$53.00 to be reasonable, given the temperatures in Revelstoke during that time of year.

There is a general legal principle that places the burden of proving a fact on the person who alleges it when the allegation forms an essential part of a person's claim. In these circumstances, the burden of proving the rental unit requires repair rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that the roof of the rental unit is leaking. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a report from a roofing contractor, which corroborates the Tenant's claim that the roof is leaking or that refutes the Landlord's testimony that it is not leaking. I therefore dismiss the Tenant's claim for compensation for a leaking roof and the Tenant's application for an Order requiring the Landlord to repair the roof.

I grant the Tenant leave to file another Application for Dispute Resolution in regards to the roof, but only if she submits documentary evidence from a professional roofing contractor, which indicates that the roof needs repairs.

I find that the Tenant has submitted insufficient evidence to establish that the thermostat in the rental unit is not working properly. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a report from a heating technician or electrician, which corroborates the Tenant's claim that the thermostat is not working properly or that refutes the Landlord's testimony that it is working properly. I therefore dismiss the Tenant's claim for compensation for being without a functional thermostat and the Tenant's application for an Order requiring the Landlord to repair the thermostat.

I grant the Tenant leave to file another Application for Dispute Resolution in regards to the thermostat, but only if she submits documentary evidence from a qualified electrician or heating technician, which indicates that the thermostat needs repairs.

I find that the Tenant has submitted insufficient evidence to establish that the oven is not working properly. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a report from an appliance technician or electrician, which corroborates the Tenant's claim that the oven is not working properly or that refutes the Landlord's testimony that it is working properly. I therefore dismiss the Tenant's claim for compensation for being without a functional oven and the Tenant's application for an Order requiring the Landlord to repair the oven.

I grant the Tenant leave to file another Application for Dispute Resolution in regards to the oven, but only if she submits documentary evidence from a qualified appliance technician, which indicates that the oven needs repairs.

On the basis of the undisputed evidence, I find that the Landlord has not complied with his agreement to inspect the smoke detector to determine if it is functioning properly. I therefore Order the Landlord to either immediately replace the smoke detector or have the smoke detector inspected by a qualified electrician. In the event the Landlord opts to have the smoke detector inspected, the Landlord must provide the Tenant with documentation from that person that certifies the smoke detector is functioning properly.

In the event that the Landlord does not comply with my Order regarding the smoke alarm by February 28, 2014, I authorize the Tenant to reduce her monthly rent payment by \$10.00, effective March 01, 2014, and to reduce the monthly rent by \$10.00 for each subsequent month until such time as the Landlord complies with this Order.

I also authorize the Tenant to reduce her next monthly rent payment by \$30.00 in compensation for this breach of her right to the quiet enjoyment of the rental unit during the months of December of 2013, January of 2014, and February of 2014.

I find that the Tenant's Application for Dispute Resolution has some merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I hereby authorize the Tenant to reduce one monthly rent payment by a total of \$193.00, which is comprised of \$90.00 in compensation for the aforementioned delays in repairing the rental unit, \$53.00 in hydro costs, and \$50.00 she paid to file this Application for Dispute Resolution.

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 17, 2014

Residential Tenancy Branch

