



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, RP, RR

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to make repairs?

- Is the tenant permitted to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this tenancy started on July 01, 2012 for a month to month tenancy. The tenant paid a security deposit of \$250.00 on July 01, 2012. The tenant testifies that rent was agreed at \$500.00 per month until such a time as all the required repairs were completed and then rent would rise to \$700.00 per month. The landlord testifies that rent was \$700.00 per month and was reduced to \$500.00 per month while the floor in the unit was repaired.

The tenant testifies that when they agreed to enter into this tenancy the unit was not worth \$700.00 per month as there were many repairs to be completed. The landlord agreed to reduce the rent to \$500.00 per month until the landlord had finished all the repairs. The tenant testifies that she has a license to grow medical marijuana and found it difficult to find accommodation. The landlord signed an agreement to allow the tenant to grow medical marijuana in the unit.

The tenant testifies that she moved into the unit and the flooring was repaired with the exception of the hallway. The landlord did pay for the materials but the tenant had to pay the labour costs of \$600.00 plus \$54.20 for glue for the tiling. The landlord was supposed to reimburse the tenant for these costs but has failed to do so. The tenant testifies that in May, 2013 the landlord told the tenant that rent was now going to be \$700.00 as the floor was done. The tenant testifies that there are still many outstanding repairs that the landlord had agreed to do. To date the landlord has still not completed repairs to the bathroom which the landlord agreed to gut to replace the plumbing and new drywall, a new window in the dining room which currently is boarded over, plus drywall on the walls and ceiling, the wiring needs to be rerouted as wires are hanging down, the flooring in the hallway needs to be replaced as it is damaged and torn, and

the hot water needs to be connected to the kitchen. The landlord agreed to provide a shed outside for storage and a wood shed.

The tenant testifies that the landlord has built a temporary canvass construction for wood storage but this will not survive long, the living room was carpeted and painted and some tiling was put down. The access stairs have been replaced and skirting put up around the porch and the landlord has cleared the unit of abandoned furniture and appliances. The tenant testifies that as per their verbal agreement until the rest of the repairs are done and the unit is suitable for occupancy the rent should not increase to \$700.00.

The tenant seeks a Monetary Order to recover the cost of the flooring work for \$654.20. The tenant seeks an Order to keep the rent at \$500.00 until the repairs are completed. The tenant also seeks an Order for the landlord to complete the agreed upon repairs as listed above.

The landlord testifies that he only agreed to reduce the rent for the first three months because the tenant wanted to get her own contractor in to do the flooring. The landlord testifies that he agreed to reduce the rent by \$600.00 in total to pay for the flooring repairs. The landlord testifies that when the flooring was completed the rent should have gone back up to \$700.00.

The landlord testifies that the tenant wanted to get her own carpenters in to do some of the other work. The tenant wrote to the landlord twice in November stating that her carpenters were going to be starting work in November and December, 2013. The landlord testifies that he called one of these carpenters and was told that they needed to arrange a time with the tenant to get into the unit to do the work.

The landlord testifies that he is not prepared to do the work in the bathroom as the tenant has run a pipe from the tub to the back room for her marijuana plants. The landlord agreed that he had signed an agreement for the tenant to grow medical

marijuana in the unit but states he is not doing any more repairs until this grow up is gone.

The tenant testifies that she had contacted carpenters to start some repair work but the tenant did not think she should have to pay for this work as it was the landlord's responsibility.

The landlord disputes the tenant's claims to recover the money paid for the flooring of \$654.20 and states this money was paid to the tenant in a \$600.00 rent reduction and the landlord paid the additional \$54.20. The landlord disputes the tenants claim for repairs and for a rent reduction. The landlord testifies that he is losing money each month and the tenant should be paying \$700.00.

The landlord calls his witness BJ. This witness is the landlord's spouse. The witness testifies that she was present at the start of the tenancy and party to the agreement made between the landlord and tenant. The witness testifies that the tenant had said she could not afford to pay \$700.00 per month straight away and so the landlord agreed the tenant could pay \$500.00 a month for three months plus utilities. The witness testifies that the landlord said the unit needed repairs and did not want to rent it at that time but the tenant seemed desperate.

The tenant cross examines the witness and asks the witness if she was party to the discussion about repairs. The witness responds no.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants claim to dispute an additional rent increase. At this time no legal rent increase has been imposed by the landlord. No rent increase form has been provided to the tenant. The matter rests on whether or not the parties had a verbal agreement that the rent would be reduced to \$500.00 per month.

The landlord argues that this rent reduction was only for three months; the tenant argues that the agreement was that the tenant would pay \$500.00 until such a time as all repairs were completed.

By their very nature verbal agreements are difficult for a third party to interpret. Consequently in this matter the tenant has the burden of proof to show that the agreement was for rent to be reduced until repairs were completed. Neither party has put this in writing therefore it is a matter of one person's word against that of the other and therefore the burden of proof is not met.

However having reviewed the evidence before me I find the rental unit is in need of repairs and maintenance in order to meet the requirements under section 32 of the *Act* which states :

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Furthermore section 32(5) of the *Act* states:

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Consequently, having reviewed the evidence before me I find the landlord has not complied with section 32(1) of the *Act* and the unit does require repairs and decoration in order to make it suitable for occupation by the tenant. Therefore regardless of whether or not a verbal agreement was entered into it is my decision that the tenant is

entitled to reduce her rent for repairs to be completed and may continue to pay rent of \$500.00 per month until the following list of repairs are completed by the landlord. The tenant's only obligation in the matter of repairs is to ensure that the landlord and any contactors have easy access into the rental unit to make the following repairs:

Flooring in the hallway;

Bathroom repairs to plumbing and drywall;

Window in the dining area;

Drywall in the dining area on walls and ceiling;

Wiring must be safe and secure and no exposed wiring should be present;

Provide a hot water supply to the kitchen.

I am not prepared at this time to order the landlord to erect a storage shed or shed for firewood as these are not essential to the tenant's occupancy.

Furthermore I Order the landlord to complete the above repairs within three months of this decision. If the landlord fails to do so the tenant is at liberty to file a new application for a further rent reduction and/ or compensation.

With regard to the tenants claim for a Monetary Order for money owed. When repairs are required in a rental unit these are the responsibility of the landlord and not of the tenant. The tenant paid \$654.20 for the flooring and has not been reimbursed by the landlord for these amounts. The landlord argues that the tenant was reimbursed through the three month rent reduction totaling \$600.00 and that the extra amount of \$54.20 was paid by the landlord. As I have found that the tenant is entitled to pay rent of \$500.00 per month until repairs are completed and I have insufficient evidence to show that the landlord and tenant agreed the tenant would pay the contractors out of a rent reduction; it is my decision that the landlord must reimburse the tenant for the amounts paid by the tenant to the contractors. The landlord has provided no evidence to support his claim that he paid the extra amount of \$54.20. Consequently I find the tenant is entitled to a Monetary Order for **\$654.20** pursuant to s. 67 of the Act.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$654.20**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenant to continue to pay a reduced rent of \$500.00 per month until such a time as the above noted repairs are completed. At that time the rent will increase to \$700.00 per month.

I HEREBY ORDER the landlord to make the above noted repairs within three months of receiving this decision and Order

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: March 19, 2014

Residential Tenancy Branch

