



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matters

At the outset of the hearing it was noted that the Tenant indicated in the body of the application that a claim was being sought for compensation although the term used was “rent abatement”. The Tenant confirmed that this was her intention but was not sure how to frame the claim. The Landlord did dispute this understanding of the Tenant’s application so the hearing proceeded. It was also noted that the matter of the security deposit was already dealt with in a previous decision. As a result the Tenant’s claim for recovery of the security deposit was dismissed.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on October 1, 2009 and ended on July 31, 2013. Rent of \$7,500.00 was payable each month and was raised to \$7,670.00 effective January 1, 2013.

The Tenant states that although numerous repairs were required throughout the tenancy, the Tenant first wrote formal request for repairs commencing in June 2012. At this time the Tenant requested maintenance of the overgrown garden that was being filled with rat nests. The Tenant states that although a garden service was provided during the tenancy, this service only cut the lawn. The Tenant states that the situation was so bad that rats would run in front of persons walking in the garden and her daughter was not able to play in the garden area. The Tenant states that the garden was not repaired until February 18, 2013.

The Tenant states that several emails and phone calls were made during September and October 2012 for repairs to the house, including exterior rotting wood and paint peel on the balcony and railings, leaking toilets, leaks from ceilings under the toilets, leaking kitchen taps, non functioning outdoor electrical outlets, sporadic heating problems in various rooms and the smell of sewer in the basement. The Tenant states that the sewer smell came from a sewer back up that occurred in 2011 after which the soiled carpets were not replaced. The Tenant states that the sewer smell would occur whenever there was heavy rain.

The Tenant states that repairs to the house were started not started until June 4, 2013 however only the kitchen tap was ultimately repaired. The Tenant states that some work was done on the toilets but that the leaks never stopped. The Tenant states that she was trying hard to work with the Landlord's Agent but that the Landlord kept delaying by obtaining repeated repair quotes several months apart. The Tenant states that she was embarrassed at the unsightliness of the exterior of the house and buckets in various rooms catching drips and as a result had no guests over. The Tenant states that she worked out of the home and was constantly interrupted in relation to the multiple repair requests, conversations with the Agent, visits/quotes being obtained,

cleaning up the messes from the leaks and cleaning up paint peels. The Tenant states that she was mistakenly misled into believing that the repairs would be made by the acts of the Landlord to obtain quotes. The Tenant states that the Landlord was negligent in attending to the repairs and claims \$15,190 for the loss of quiet enjoyment and for the Landlord's breach of its obligation to maintain the unit and yard.

The Landlord's Agent at the Hearing states that the previous Agency was replaced by the Landlord and agrees that the repairs took too long. The Landlord's Agent states that the Landlord was led to believe by the previous agent that repairs were being done in a timely fashion. The Landlord argues however that the amount claimed by the Tenant is excessive and that a more reasonable compensation would be at 10% of the rent payable.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given both Parties evidence, I find on a balance of probabilities that the Tenant has substantiated that the Landlord was negligent in its obligations to repair and maintain the unit and yard. I also find that as a result of this negligence the Tenant suffered a loss of enjoyment. I find however that the amount claimed is excessive as the Tenant still had the value and enjoyment of the remainder of the unit. As the Tenant commenced formal complaints in June 2012, noting that the yard was repaired 8 months later and that the great majority of the remaining repairs were not completed before the end of the tenancy, I find that the Tenant is entitled to a global loss of 10% of the value of the tenancy over a one year period. Noting a rent increase during this period, I base the total amount on \$750.00 per month for six months (\$4,500.00) and

\$767.00 per month for the remaining 6 months (\$4,602.00) for a total amount of **\$9,102.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$9,102.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 28, 2014

Residential Tenancy Branch

