



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KING ALBERT APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, RP, PSF, AAT, RR, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following reasons;

- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement
- for the Landlord to comply with the Act, regulation or tenancy agreement
- for the Landlord to make repairs to the rental unit
- for the Landlord to provide services or facilities required by law
- to allow the Tenant access to the unit
- to allow the Tenant to reduce rent for repairs agreed upon but not provided
- to recover the filing fee for the cost of the Application
- for ‘Other’ issues of which none were identified during the hearing

The Tenant appeared and provided affirmed testimony during the hearing as well as written evidence in advance of the hearing. There was no appearance by the Landlord during the 90 minute duration of the hearing and no submission of written evidence prior to the hearing. As the Landlord failed to appear for the hearing, I focused my attention to the service of the documents related to this hearing.

The Tenant testified that he had served a copy of the Application, the Notice of Hearing documents and his written evidence by registered mail to the Landlord’s office address. The Tenant provided the Canada Post tracking receipts as evidence for this method of service and testified that he had sent the documents to the Landlord’s office address where they conduct business; the Tenant testified that he personally delivers his rent cheques to this office address where they are accepted and subsequently cashed.

The Tenant also provided a copy of the rental application document that he completed before the tenancy began which also details the Landlord’s name and office address as it appears on the Tenant’s Application.

Furthermore, the Tenant testified that the postal office staff informed him that the Landlord's agent had attended the post office to collect the documents after a Canada Post note had been left for the Landlord to pick up the documents after attempted delivery of them. The Tenant testified that the staff member informed him that the Landlord refused to take them citing the fact that the documents did not contain a return address.

Section 90(a) of the Act explains that a document served by registered mail is deemed to have been received five days after being mailed. A party cannot avoid service by failure or neglect to pick up mail and neither can this form the basis of a review application. Based on the deeming provisions of the Act and the undisputed testimony of the Tenant in relation to the address where the documents were sent to, I am satisfied that the Landlord was served the required documents in accordance with the Act and the Rules of Procedure.

As a result, I continued to hear the undisputed testimony and written submissions of the Tenant as follows.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make repairs and comply with the Act?
- Is the Tenant entitled to a reduction in his monthly rent and to monetary compensation for failure of the Landlord to do repairs to the rental unit?

Background and Evidence

The Tenant testified that on November 26, 2013 he responded to an advertisement posted on a board outside the rental building. The Tenant called the number and spoke to the rental agent, whose name is detailed on the front page of this decision and is referenced in this decision as the "Landlord's agent". The Tenant viewed the rental suite with the Landlord's agent who informed the Tenant that the suite required refurbishment because it had been abandoned by previous renters and that it would be ready for occupancy on December 10, 2013; as a result the Tenant completed a rental application form.

The Tenant testified that while a tenancy agreement had not been completed between the parties, monthly rent was established in the amount of \$750.00 payable by the Tenant on the first day of each month. The Tenant paid the Landlord a security deposit

in the amount of \$375.00 on December 9, 2013 and the tenancy started the next day. For the first month of rent, the Tenant paid a prorated amount of \$525.00; the Tenant provided a copy of his rent cheques for the length of the tenancy until March, 2014 and the security deposit cheque as evidence for this hearing which show that monies are payable to the Landlord named on the Application.

The Tenant testified that the rent amount included heat, appliances, one parking space, a patio area and a storage shed.

The Tenant testified that he intended to take occupancy of the rental suite after the Landlord had promised to refurbish it. However, when the Tenant took occupancy on December 10, 2013 he realised that there were several repairs that were required as follows:

- The patio area had debris strewn over it which the Landlord had not removed prior to the tenancy commencing. The Tenant provided photographic evidence which indicates a number of junk items and an abandoned outdoor table in the patio area. The Tenant testified the Landlord's agent often visited the rental suite to clear some of these items, but the patio was not completely cleared until May 16, 2014.
- The Tenant testified that he did not receive the keys to the storage shed from the Landlord's agent until March 18, 2014; the Tenant explained that this was because the Landlord's agent was also taking his time to remove items from the storage shed which he should have had access to from the onset of the tenancy.
- The Tenant testified that he received a dirty stove for the tenancy and provided photographic evidence showing the stove top was dirty, the inside was unclean and the extractor fan above the stove top was also dirty and required a protective screen/guard. The Tenant explained that while the stove was functional it was very old.
- The Tenant explained that he has no control of the heat in his unit, as what appears to be a thermostat in the unit is broken. The Tenant testified that sometimes his unit is too hot and sometimes it is too cold at which point he will turn on the stove to heat the rental unit. The Tenant testified that he repeatedly asked the Landlord to fix this and on January 6, 2014 the Landlord's agent attended the rental suite, apparently did some repairs, and told the Tenant that the heat problem was fixed. The Tenant testified that to date the heat issue remains outstanding and is an essential service.
- The Tenant explained that the kitchen cupboard doors above and below the sink have not been hung properly and provided photographic evidence in support of

this. The Tenant also stated that the door to the coat closet is missing and the door to the linen closet needs to be re-hung. The Tenant also testified that the light fixture in the coat closet is non-functional.

- The Tenant testified that the freezer has not been working since the last week of March, 2014 and the Landlord has also failed to fix this problem after being notified of it.
- The Tenant explained that the intercom system to the building is not working and when he has visitors he has to physically go downstairs to the front entrance and let them in. The Tenant explained that his guests and visitors are unable to dial to his rental unit and entry has to be facilitated through his own cell phone. When the Tenant was asked whether this problem was specific to the Tenant's unit, the Tenant explained that he had heard that the system had not worked for two to three months prior to his occupancy. The Tenant submitted that by not fixing the intercom system, the Landlord is hindering access to his visitors and persons permitted on the premises.

The Tenant testified that at the start of the tenancy he had multiple verbal conversations with the Landlord's agent regarding these problems and asked for the repairs to be done. However, while the Landlord's agent did fix some problems requested by the Tenant, the ones outstanding above have not been completed.

The Tenant provided a number of written requests to the Landlord which were comprehensive and detailed in nature. The first written letter is dated January 6, 2014 in which the Tenant requests the Landlord to fix the heating system due to the cold weather.

The Tenant then provided the Landlord with a typed and written letter on February 12, 2014 in which the Tenant again requests the above repairs be made. The Tenant submits that he is a reasonable person that has tried to work with the Landlord in getting these repairs done and has given the Landlord ample time to make these repairs.

Analysis

I have examined the Tenant's undisputed testimony and written evidence and make the following findings based on a balance of probabilities.

The Act defines a tenancy agreement that can be oral, express or implied between parties. In addition, Section 17 of the Act states that a Landlord can require a security deposit as a condition of entering into a tenancy agreement.

Based on the foregoing, I find that while the Tenant and Landlord did not complete a written tenancy agreement, the written evidence in the form of a rental application showing the Landlord's company name, the copies of the rental cheque paid to the Landlord named on the Application, and the security deposit exchange, is sufficient evidence to determine that a month to month tenancy has been established between the parties under the Act.

Section 32(1) and (5) of the Act requires a Landlord to provide and maintain residential property in a state of decoration and repair that complies with the law and makes it suitable for occupation by the Tenant. Section 30 of the Act explains that the Landlord must not unreasonably restrict the access to the rental suite by the Tenant or a person permitted on the property by the Tenant. Section 27 states that a Landlord must not restrict an essential service to the Tenant's use of the rental unit.

Based on the foregoing provisions of the Act and the undisputed testimony and written evidence of the Tenant which also includes photographic evidence, I find that the Landlord has breached the above provisions of the Act by failing to complete repairs to the rental suite, despite repeated verbal and written requests made by the Tenant to the Landlord.

As a result, the Tenant seeks monetary relief in the amount of \$4,999.00 for the Landlord's breach of the Act which he has experienced to date and also seeks monetary relief until the above repairs have been completed.

Section 65(1) (c) of the Act authorizes me to make an order that any money paid by a Tenant to a Landlord must be repaid to the Tenant or must be deducted from the rent. Section 65(1) (f) of the Act also provides me with the authority to reduce past or future rent paid by a Tenant to a Landlord if I determine that there has been a reduction in the value of a tenancy.

In making a finding of the Tenant's entitlement to compensation for a devaluation of the tenancy, I have taken into consideration the extended period of time it has taken for the Landlord to remove the debris from the patio area and provide the Tenant with full and exclusive access to the storage shed which forms part of the tenancy. I have also considered the Tenant's multiple requests to the Landlord to have the necessary repairs done, most of which are still outstanding.

As a result, and pursuant to Sections 65(1) (c) and (f) of the Act, I have determined that the Tenant is entitled to monetary relief for past rent paid by the Tenant to the Landlord. Based on the foregoing evidence provided by the Tenant, I award the Tenant a more

reasonable and appropriate reduction in the value of the tenancy by 30% per month from the start of the tenancy. This results in a monthly reduction of \$225.00 for the six months the Tenant paid regular rent of \$750.00 (inclusive of June, 2014 rent) and \$157.50 for December, 2013 rent when the Tenant paid a prorated amount of rent in the amount of \$575.00. As a result, I find that the total amount awarded to the Tenant in this respect is **\$1,507.50** $((225 \times 6) + 157.50)$.

As the Tenant has been successful in this matter, the Tenant is also awarded the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Tenant in monetary compensation is \$1,557.50.

The Tenant indicated that he was considering whether to continue in this tenancy; as I am unable to determine the period of time this tenancy will continue, I find that it is more appropriate to award the Tenant the above amount in the form of a Monetary Order.

In relation to the outstanding repairs as evidenced by the Tenant, I order the Landlord to make the following repairs to the rental unit:

- Re-hang the kitchen cupboard doors above and below the kitchen sink
- Re-hang the linen closet door
- Install a door to the coat closet
- Repair the light fixture in the coat closet
- Repair the freezer
- Clean the stove (the top and the inside)
- Clean the extractor fan and install an appropriate cover/guard
- Repair the heating system to provide appropriate room temperatures
- Repair the intercom system

As the Landlord failed to appear for the hearing, there was no opportunity to schedule a reasonable time to complete these repairs. Therefore, until the above repairs are completed and in accordance with Section 65(1) (f) of the Act, I grant the Tenant a continuing rent abatement and I order the Tenant to reduce future monthly rent payable by \$225.00 until such time as the above repairs are completed. The Tenant should inform the Landlord of his intention to redeem this amount when making a reduced monthly rent payment.

In the month after these repairs are completed, I order that the monthly rent for this tenancy reverts to the regular amount established in this tenancy agreement (i.e., currently \$750.00). For example, if the Landlord completes repairs by July 7, 2014 the

Tenant is liable to pay the normal amount on August 1, 2014. However, if the Landlord completes the above repairs and the Tenant is not satisfied and continues to withhold rent, the Landlord is required to file an Application to prove to the Residential Tenancy Branch that there has been compliance with this decision.

Conclusion

The Tenant has been successful in his Application.

The Landlord is ordered to complete repairs to the rental unit as laid out above.

For the reasons set out above, I grant the Tenant a Monetary Order in the amount of **\$1,557.50** which relates to a retroactive rent abatement and the filing fee. If the Landlord fails to make payment, then this order must be served on the Landlord and enforced in the Provincial Court (Small Claims).

In addition to the above amount, the Tenant is also granted a deduction in the amount of \$225.00 from ongoing monthly rent until the month after the above repairs have been completed.

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: June 18, 2014

Residential Tenancy Branch

