



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNR, MNDC, RP, LRE, LAT, AS, RR

Introduction

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

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for repairs – Section 32;
4. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
5. An Order to change the locks – Section 70;
6. An Order to allow an assignment or sublet – Section 65;
7. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65;

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath. This hearing continued from the original hearing date of April 9, 2014 at which time the Parties agreed that the Tenant paid all rents and that the notice to end tenancy was no longer valid or effective. An interim decision, dated April 15, 2014 was issued in relation to most of the repairs being claimed.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to repairs?

Is the Tenant entitled to conditions on the Landlord's right to enter the unit?

Is the Tenant entitled to change the locks?

Is the Tenant entitled to sublet the unit?

Background and Evidence

The tenancy started on September 29, 2013 on a fixed term to October 1, 2014. Rent of \$1,200.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Parties mutually conducted a move-in inspection on September 29, 2013.

The Tenant states that the unit was advertised as a two bedroom and that the tenancy agreement was for two Tenants sharing the unit. The Tenant states that when she viewed the unit it was dark and it was not until she moved into the unit having paid the security deposit that she discovered the second bedroom wall had a gap between the bedroom and the living room are allowing visuals into the bedroom. The Tenant states that the Landlord then agreed to fix the wall after Christmas. The Tenant states that this has not happened. The Tenant claims reduced rent until the Landlord closes the gap. The Landlord agrees to close the gap in the wall by June 30, 2014.

The Tenant states that the other tenant noted on the tenancy agreement did not move into the unit and that the Tenant advertised for another roommate and had one prospective roommate view the unit each month from November 2014 to February 2014 inclusive. The Tenant states that they declined the unit due to the wall. The Tenant claims compensation of \$1,800.00 for the loss of use of the bedroom and for the reduced value to the unit.

The Landlord states that they do not believe that the Tenant advertised sufficiently as there is currently a low vacancy rate and the Tenant should have more readily found a roommate regardless of the wall gap. Further the Landlord argues that the Tenant is receiving a rental rate comparable to current rates for a one bedroom and den unit. The

Tenant provided no supporting evidence of advertising or loss of the prospective tenants. The Landlord provided no supporting evidence of the surrounding vacancy rate or rental rates.

The Tenant states that the door frame in the bathroom has a worn out spot pre-existing from the start of the tenancy that was not noticed during the move-in inspection. The Tenant states that although the door is useable it requires repair. The Landlord states that the door does not require repair from a cosmetic problem only.

The Tenant states that the master bedroom walls are damaged by having only three strips of wallpaper that does not cover the wall. The Tenant states that she has been asking the Landlord to remove the wall paper strips and to paint the bedroom but that the Landlord has failed to do so. The Landlord does not know when the bedroom wall was last painted.

The Tenant states that the landlord entered her unit without notice or permission on one occasion to retrieve an article and that the Landlord left a note to this effect in the unit. The Tenant states that the Landlord also entered a couple of times to make repairs and that although no entries have been made since January 2014 her neighbours have told her that they have heard sounds from her unit while she was away from the unit. The Tenant requests that the Landlord follow the Act for future entries into the unit and that any entries be made by a person other than the Landlord. The Tenant states that the Landlord scares her with a condescending tone of voice and by yelling at her.

The Landlord agrees to follow the Act for entries but states that they cannot always agree to having an agent attend in the Landlord's place as sometimes the Landlord does the repairs himself. The Landlord's Agent agrees to provide additional notice to the Tenant should the Landlord himself be seeking entry so that the Tenant may make arrangements to have someone with her or to leave the unit for the entry. The Landlord's Agent states that he has never witnessed the Landlord acting or speaking in any untoward way with the Tenant.

The Parties agree that that the Tenant may change the locks and provide a key to the Strata to hold in case of emergency and if the Tenant is not at the unit for entry by the Landlord after appropriate notice.

The Tenant states that she is seeking a sublet for over the summer months while she is away and requests an order that such a sublet is not restricted. The Landlord notes that the Tenant's right to sublet is already provided for in the tenancy agreement and is the same provision as contained in the Act.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant 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 that the tenancy agreement lists two tenants, and considering the undisputed evidence that the unit was advertised as a two bedroom, I accept that the tenancy agreement provided for two bedrooms. Given the Tenant's evidence of acceptance of the Landlord's promise to close the gap, I find that the Tenant accepted the tenancy "as is" until January 2014. As a result I dismiss the Tenant's claim for compensation from the onset of the tenancy to December 31, 2013.

Accepting that the Landlord agreed to repair the second bedroom wall and failed to do so, I find that the Tenant has substantiated a loss from January 1, 2014 onwards but not to the extent claimed. I accept that a visual opportunity between the second bedroom and the living room would reasonably have stopped prospective roommates or co-tenants from wanting to reside in the unit however the Tenant has failed to provide

supporting evidence of the actual advertising or loss of prospective roommates or co-tenants. Given these considerations but also noting the lack of supporting evidence from the Landlord in relation to the current rental market, I find that the Tenant has only substantiated a nominal amount for the loss in the value of the unit from January 1 to June 30, 2014 of **\$1,200.00**, calculated on a monthly value loss of \$200.00 per month for six months. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim. Given the Landlord's agreement to repair the gap on the wall by June 30, 2014, which I find to be reasonable, I dismiss the Tenant's claim for a rent reduction.

The Tenant must take responsibility for ensuring at the outset of the tenancy that the unit is to the standard expected and agreed to by the Tenant. For this reason and accepting that the door frame has pre-existing damage that does not impair the operation of the door, I dismiss the Tenant's claim for this repair.

The Residential Tenancy Branch policy on useful life of building elements indicates the useful life of interior paint is four years. Considering the lack of evidence on the last time the unit was painted and given the evidence of only some strips of wallpaper on the wall, I find that the Tenant has substantiated that the master bedroom walls requires repair and I order the Landlord to paint this wall as soon as is reasonably possible but before the end of July 2014.

Given the Landlord's agreement in relation to entries and the change of the lock, I find that the Tenant's claims in relation to the entries and locks have been satisfied and I dismiss these claims. Given the tenancy agreement and the lack of evidence that there is any disagreement about a sublet, I find that the Tenant's claim for an order allowing a sublet is without merit and I dismiss this claim.

Should the Landlord fail in good faith to make the repairs agreed to for both bedrooms, the Tenant has leave to reapply for compensation.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This interim 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 20, 2014

Residential Tenancy Branch

