



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, RR, RP, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for monetary order for compensation for noise disturbances and unsafe living conditions and for orders to reduce rent and carry out repairs. The tenant also applied for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the start of the hearing, the tenant informed me that he was going to move out on August 01, 2014. Therefore the tenant's application for a rent reduction is moot and accordingly dismissed.

Issues to be decided

Has the landlord fulfilled her responsibilities as a landlord with regard to following up on the tenant's complaints? Is the tenant entitled to compensation and the filing fee?

Background and Evidence

The tenancy started on August 01, 2013. Rent is \$850.00 due on the first of each month. The tenant also pays \$100.00 per month for utilities. The rental unit is a house, located on acreage. The landlord rents the house from the owner and sublets the basement to the tenant. The landlord stated that she owns horses.

The tenant testified that on September 10, 2013, he informed the landlord of a problem with sewage backing up into the house. The landlord contacted the owners who hired a commercial company to pump out the holding tank. The technician who carried out the work informed the landlord that the septic field was failing and needed to be checked out. Since the tenant worked at a place that handled similar work, the landlord asked the tenant if he knew anyone who could do the job.

The tenant recommended a friend and the work on the septic field started on September 24, 2013. While digging the field, some pipes that carried sewage were broken and raw sewage started to flow out of the breaks in the pipes.

The landlord stated that an anonymous call was placed to Fraser Health and an inspector visited the site and issued a notice to the owner to have the septic field graded and restored to full functionality. The owner hired a contractor and the work entailed site surveys and inspections by the local municipality. The work was completed and approved of by the municipality on October 29, 2013.

The tenant stated that his bathtub drains very slowly and when a washing machine or flush is used, some water backs up into his bathtub. The tenant informed the landlord on February 10, 2013 and the landlord informed the owners. The owners came by and inspected it and tried using liquids to clear any clogs. When the problem did not go away, the owner hired a plumber who used an auger to clear the pipe. The problem still exists and I order the landlord to have the problem taken care of by July 15, 2014.

The tenant also stated that his dog found a dead horse in the back yard and he informed the landlord on February 17, 2014. The landlord stated that the horse had passed away behind the shed in 2-3 feet of mud. The owners contacted the Ministry of Environment and hired an excavator to bury the horse. The owners provided the operator of the excavator with instructions obtained from the Ministry of Environment and the horse was buried on March 03, 2014.

The tenant further complained about noise disturbances in the early morning. The landlord stated that the tenant texted her on April 10, 2014 and asked her to reduce the noise created by her footsteps, in the early morning. The landlord stated that she leaves the home at 7am along with her child and the noises are caused by her getting herself and her child ready to leave, for the day.

The tenant is claiming \$5,000.00 as compensation for the problems with the sewer, the bath tub, the dead horse and the noise disturbances. The tenant stated that he arrived at this figure by calculating a rent reduction of \$500.00 per month for 10 months.

Analysis

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord fulfilled her obligations by responding in a timely manner to the tenant's complaints and taking appropriate action to resolve the problem. The landlord repaired the septic field immediately, responded to the tenant's complaint regarding the dead horse and made the arrangements for the horse to be buried according to the instructions of the Ministry of Environment. The landlord also hired a plumber to fix the problem with the bath tub but since the problem still exists, I order the landlord to investigate further and carry out the required repairs by July 15, 2014. Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. The tenant's testimony consisted of some noise disturbances associated with normal every day activities. The landlord who lives upstairs, leaves for work in the early morning and therefore noise disturbances caused by movements are not unexpected. The noise disturbances may inconvenience the tenant, but tenants renting a basement suite in a house such as this are required to accept the fact that they will hear noises from the upstairs occupants, that are associated with every day activity.

Based on the evidence and testimony of the parties, I find that the landlord did not breach the tenant's right to quiet enjoyment and responded in a responsible manner to the complaints made by the tenant. Therefore I find that the tenant is not entitled to compensation.

I find that the tenant has not proven his case for compensation and accordingly must bear the cost of filing his application.

Conclusion

The tenant's application is dismissed in its entirety.

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 25, 2014

Residential Tenancy Branch

