



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Emerald Heights Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, RP, RR

Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is located in a 4 level building within which are a total of 19 separate units.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on April 01, 2008. Monthly rent is due and payable in advance on the first day of each month. Effective September 01, 2014, monthly rent was increased to \$840.00. A security deposit of \$410.00 was collected near the start of tenancy.

The tenant claims that an air conditioner in his unit is not properly functioning. The parties agree that the tenancy agreement is silent on the provision of an air conditioner. The tenant testified that it is the same air conditioner that was in the unit when his tenancy began, however, its exact age is unknown. It is understood that the tenant has rarely used the air conditioner during the several years after the tenancy began in 2008, until this past summer in 2014. Documentary evidence before me includes several letters exchanged between the parties in regard to the air conditioner during the months

of June, July and August 2014. The landlord claims that no other residents in the building have claimed that their air conditioners are not properly functioning.

“JL” and “DC” attended the unit on August 14, 2014 in order to inspect the air conditioner. These are the same 2 individuals who represented the landlord at this hearing. While “DC” undertook to test the functioning of the air conditioner, the tenant disagreed with “DC’s” methodology and his conclusion which is that the air conditioner appeared to be working properly. Thereafter, an interpersonal upset occurred between the parties and the tenant instructed “JL” and “DC” to leave the unit.

During the hearing the parties undertook to achieve at least a partial resolution.

Analysis

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord’s handyman, “Mr. E.” will attend the unit with the landlord’s agent, “JL” in order to complete a **3rd party inspection of the air conditioner**;
- that the landlord will give the tenant proper **24 hour advance notice** of the above inspection;
- that the above inspection will take place by no later than **midnight, Friday, October 30, 2014**;
- that **if it is conclusively determined** there is damage or some other problem which impedes the full functioning of the air conditioner, the air conditioner will either be **repaired or replaced in a timely manner**.

Based on the documentary evidence and testimony, I find that the tenant has failed to prove on a balance of probabilities that he has established a claim to compensation arising in particular from the nature of his dealings with either “JL” or “DC” and / or their visit to his unit. This aspect of the application is therefore dismissed.

I further find that there is presently insufficient evidence that the air conditioner in the tenant’s unit is not fully functional. Pending the outcome of a 3rd party inspection of the

air conditioner, the tenant's application for related compensation is hereby dismissed with leave to reapply.

Following from all of the above, the tenant's application for an order instructing the landlord to make repairs to the unit, site or property / and for permission to reduce rent for repairs, services or facilities agreed upon but not provided, are also hereby dismissed with leave to reapply.

Conclusion

The parties have achieved a partial settlement of the dispute, as detailed in the above RECORD OF SETTLEMENT.

The balance of the tenant's application is variously either dismissed or dismissed with leave to reapply.

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: September 24, 2014

Residential Tenancy Branch

