



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Direct Trends Int.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, CNR, MNDC, OLC, RP, LRE, LAT, RR, FF, O

Introduction

This hearing was convened by way of conference call following a hearing before me on June 25, 2014. The tenant and one of the named landlords attended that hearing. The tenant had applied for certain relief and much of the application was severed to be heard on this date. A Decision was provided to the parties on June 30, 2014 which dismissed much of the tenant's application and provided the landlords with an Order of Possession effective June 30, 2014.

The balance of the tenant's application, and the matters scheduled to be heard today are the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee for the cost of the application. The claim is against the landlord company and 2 named individuals.

Prior to the commencement of this hearing, 42 pages of evidence was received by the Residential Tenancy Branch from an unknown source, and 3 letters have also been received by the landlords as evidence, all of which state that the writers have no involvement in this dispute. One of the letters is from one of the individuals named as landlord in the tenant's application.

The tenant attended this hearing, and gave affirmed testimony, however despite being provided with a copy of the June 30, 2014 Decision and Notice of Reconvened Hearing, no one for the landlords attended. The named individual who attended the hearing on June 25, 2014 was present when the balance of the hearing was adjourned and confirmed an address for delivery of the Notice of Reconvened Hearing setting out the date, time, phone number and passcode to attend, and I am satisfied that the landlord, RO and the landlord company have been served in accordance with the *Residential*

Tenancy Act. The tenant provided no testimony regarding service of the other individually named landlord, KA, and I dismiss the application in its entirety with respect to that respondent landlord.

The tenant also advised that a copy of the 42 page evidence package was not provided to the tenant, and I decline to consider any of it. All other evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment, for the landlords' failure to make repairs, and for recovery of other expenses incurred by the tenant?

Background and Evidence

This month-to-month tenancy began on October 1, 2013 and the tenant moved out at the end of June, 2014. Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month. No written tenancy agreement exists, and no security deposit or pet damage deposit were collected from the tenant.

The tenant testified that the landlord had gone to Cuba for a vacation and when he returned on March 25, 2014 he was hostile.

The tenant had asked for the kitchen sink to be fixed and stated that a plumber's snake was tried but wasn't working. The landlord had said that it would have to be dealt with at the foundation and it was too much work, so the landlord refused to do it. The tenant called a plumber even though the landlord forbade it, and the tenant was told that it was a \$300.00 repair. The tenant was without a kitchen sink for 7 weeks and had to do dishes outside in a rubber-maid container. The landlord resided upstairs and every day the tenant asked for the repair. The tenant contracted a plumber and has provided a receipt in the amount of \$199.50 for the repair dated May 16, 2014.

The week of March 17, 2014 the washer also broke, which was included in the rent from the beginning of the tenancy. The tenant has provided a copy of a cheque payable to

an individual from the tenant in the amount of \$425.00 which shows that the payment was for “washer and delivery.” The cheque does not appear to have been processed by any financial institution.

The tenant also testified that the tenant’s monetary claim was originally \$878.30 which the tenant increased on June 9, 2014 by amending the application to \$1,145.00, then the tenant amended the application again on June 17, 2014 increasing the claim to \$2,978.13. Half is a ballpark figure for loss of quiet enjoyment, harassment, name-calling, not feeling safe, company feeling uncomfortable. The landlord took photographs of a guest of the tenant and the tenant’s vehicle is one example, and the tenant testified that the last 2 months of the tenancy was total misery. The tenant has also provided lists of the claims, which include:

- \$100.00 for the purchase of fire wood which was included in the rent; the tenant found a receipt for wood purchased for the whole house;
- \$25.00 for laundry expenses due to the broken washer in the rental unit;
- \$9.49 for an inside lock;
- \$11.34 for the cost of registered mail;
- \$500.00 for inconveniences, harassment and loss of quiet and peaceful enjoyment of the tenancy from April 30 to May 15.

The tenant has provided numerous pages of type-written information, photographs, text messages, emails and 4 CD’s. The documentation includes a letter from a friend who describes tenants in another unit of the rental property being noisy and aggressive toward the writer and the tenant, and states that the tenant had to do dishes in the tub or buckets in the back yard. It also states that the landlord had threatened to remove the writer’s RV during a visit with the tenant, and that the landlord was very provoking and hostile. The letter also states that the writer watched the tenant suffer from anxiety caused by this tenancy for 2.5 months, and the situation was neglectful on the landlord’s part similar to some sort of punishment.

Another letter from the tenant’s daughter has also been provided which describes a situation where she was home alone and the landlord entered the rental unit with a key believing no one was at home.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

- That the damage or loss exists;

- That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
- The amount of such damage or loss; and
- What efforts the claiming party made to mitigate such damage or loss.

I have reviewed the evidence, and I am satisfied that the landlord had an obligation to provide the rental unit in a state of decoration and repair that made it suitable for occupation by a tenant. The *Act* states that a tenant is entitled to the cost of emergency repairs after the tenant gives the landlord notice that the repairs are required, and the *Act* sets out what repairs are deemed emergencies. I find that the tenant has established the cost of the plumbing in the amount of \$199.50.

With respect to firewood, I am not satisfied in the evidence that the tenant has established that fire wood was included in the rent.

In the absence of any evidence to the contrary, I am satisfied from the emails and text messages exchanged between the parties that the washer was included in the rent at the commencement of the tenancy, and the tenant's claim for \$25.00 for laundry is justified. However, I am not satisfied that the tenant has established a claim in the amount of \$425.00 for a washer. If the tenant replaced the washer in the rental unit, the newer washer belongs to the tenant, and the tenant should make an application to have it returned.

I accept the letter provided by the tenant's daughter that the landlord entered the rental unit believing no one was at home and I find that purchasing an inside lock which functions only when someone is inside the rental unit is justified, and I find that the tenant has established a claim for \$9.49.

The *Act* provides for recovery of the filing fee, but not recovery of costs associated with service or preparing for a hearing, and the tenant's application for the cost of registered mail is dismissed.

I also find that the tenancy was devalued during the time period that the tenant was without a kitchen sink, dishwasher and washing machine. I am also satisfied that the landlord deliberately failed to comply with the *Act* or the tenancy agreement with respect to ensuring that the rental unit was functional. I also find that the tenant suffered some loss of quiet enjoyment, however I am not satisfied that the difficulties in this tenancy were entirely the fault of the landlord or that the tenant did what was necessary to mitigate any difficulties encountered. Both parties showed disrespect for each other in the emails and text messages I have reviewed. Rent was payable in the amount of

\$1,000.00 per month, and the tenant suffered such losses from March to May, 2014, and I find that the tenant has established a monetary amount for the devaluation of the tenancy, inclusive of aggravated damages, in the amount of \$250.00 for each of those months, or \$750.00.

Since the tenancy has ended, the tenant's application for an order that the landlords be ordered to comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

In summary, I dismiss the balance of the tenant's application with respect to landlord, KA, and I find that the tenant has established a claim as against the landlord company and the landlord, RO in the amount of \$199.50 for the plumbing bill, \$25.00 for laundry, \$9.49 for an inside lock, \$750.00 for loss of use of facilities and aggravated damages, and recovery of the \$50.00 filing fee, for a total of \$1,033.99.

Conclusion

For the reasons set out above, the tenant's application as against the landlord, KA is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord company and the landlord, RO, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,033.99.

This order is final and binding and may be enforced.

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

