



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, CNR, RP, LRE, ERP, RR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), an order to force the landlord to make repairs and emergency repairs, and order to suspend or limit the landlord's access and an order reducing the tenant's rent for repairs, services or facilities agreed upon but not provided.

The tenant made the application for dispute resolution on July 10, 2014 and amended it on August 12, 2014 to include a request to cancel a 10-Day Notice to End Tenancy for Unpaid Rent .

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Determined

- Is the tenants entitled to monetary compensation and a reduction of rent?
- Should the landlord be ordered to complete repairs?
- Should there be an order issued to limit the landlord's access?

Background and Evidence

A previous hearing was held between this landlord and tenant on February 18, 2014 on the tenant's application seeking a monetary order for money owed or compensation for

damage or loss under the Residential Tenancy Act, (the Act), an order to force the landlord to make repairs and emergency repairs, and order to suspend or limit the landlord's access and an order reducing the tenant's rent for repairs, services or facilities agreed upon but not provided. The decision indicated that the landlord agreed to make repairs to the unit by February 27, 2014 including filling holes left by rodents. Repairing the living room floors to ensure there are no splinters, removing the carpet in the bedroom and ensuring that the floor is same underneath and free from splinters, repair the doors, ensure that the stove is functional and repair or replace the bathroom faucet in the tub. The landlord also agreed to give 24 hours written notice before accessing the unit, as required under the Act. The arbitrator therefore found that the parties had resolved the repair issues, but granted the tenant leave to reapply if the repairs were not done. The tenant's claims for compensation for lost food and additional heating costs were dismissed due to insufficient evidence.

The application before me relates to similar complaints. The tenant testified that the landlord made some effort towards the repairs, but most are inadequate and some were not done at all. The tenant testified that the landlord feels that the wood floors are safe, but the tenant believes that they are hazardous due to poor condition of the wood in places.

The tenant testified that, although the landlord fixed the gap in the entry door, the fact that the floor in that area is "caving in" has created another gap and the tenant requests an order to force the landlord to repair the serious issue of the sinking of the back corner of the house.

The tenant is requesting that the landlord complete filling of all the holes, replace the bathroom taps because the repair failed, fix the shower head, install a functional front porch light, ensure that the stove drawer beneath the oven is working properly, remove garbage in the shed that the tenant claims predates their tenancy, trim the invasive blackberry bushes at the side/front of the yard. The tenant pointed out that although the entry door shuts and locks, the frame is deficient and needs to be replaced. The tenant is also concerned about leaks in the water lines and doors in the unit that will not close.

The tenant submitted into evidence, copies of communications, copies of invoices, written testimony and photos.

In regard to the monetary claim, the tenant stated that, because the landlord has not completed the repairs, they seek a rent abatement. The tenant also testified that they paid \$52.50 to have their door fixed as it was an emergency situation. The tenant

submitted a copy of a cheque issued to a company on August 1, 2014 for the door repair.

The landlord argued that the agreed-upon repairs from the February 18, 2014 hearing were done as promised. However, the landlord readily agreed to address those repair issues that are still outstanding.

In regard to the problem of the sinking floor, the landlord testified that the weight of the tenant's wheelchairs may be responsible for the damage at the corner of the house and the splintering of the floor.

The landlord stated that the tenant is using the repair complaints as an excuse not to pay the rent. The landlord pointed out that they have issued a 10-Day Notice to End Tenancy for Unpaid Rent on August 12, 2014 because the rent was not received on August 1, 2014.

The tenant testified that they did pay the rent for August, 2014 but the landlord claims not to have received it. The tenant stated that the property manager instructed them to place the rent in the barbeque for pick up and they did this on August 7, 2014. The tenant stated that, because he couldn't find the cheque book, they paid in cash. The tenant provided a banking statement showing that they withdrew \$930.00 on August 5, 2014.

The landlord pointed out that the tenant normally pays rent by cheque and acknowledged that the barbeque has been used as a drop-off point in the past. However the landlord doubts the tenant's claims that they placed cash in the barbeque.

Analysis

Notice to End Tenancy

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent on August 1, 2014. However, the testimony of the two parties are in conflict with respect to the alleged late payment of the rent on August 7, 2014.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

I find that both versions of what transpired were only supported by verbal testimony from each of the participants. That being said, the parties are not on equal ground. Because the landlord carries the added burden of proof since it is the landlord who seeks to terminate this tenancy, I find that conflicting verbal testimony must be resolved in favour of the party who does not carry the burden of proof.

For this reason, I find that I must cancel this Ten Day Notice to End Tenancy for Unpaid Rent. This decision is premised on the expectation that from now on the tenant will pay the rent by cheque or money order and will not leave cash for the landlord to retrieve.

Repairs

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, to make it suitable for occupation by a tenant.

I find that the landlord had agreed to complete repairs to the unit and thereby avoided the possibility that an order for repairs would be issued by the arbitrator at the previous hearing. I also accept the landlord's testimony that they made some attempt to do the repairs. However, I find that the landlord's efforts fell short of section 32 of the Act and for this reason find it necessary to order that the repair issues described above be inspected by qualified trades persons arranged by the landlord, and that the necessary repairs be properly completed in a professional manner without further delay.

Monetary Compensation

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In regard to the request for compensation for past deficiencies in the unit, I find that the decision of February 19, 2014 dismissed the tenant's claims for compensation prior to the February 18, 2014 hearing date and I am not at liberty to revisit a matter that has already been ruled upon at a previous hearing.

However, I find that I do have the authority to consider any monetary claims that relate to the period from March 2014 to the date of this hearing before me and beyond. I hereby grant the tenant a rent abatement reducing the rent from \$930.00 to \$855.00 per month. I order that this monthly rate continue until the landlord completes all of the repairs that are the subject of this hearing and until the landlord makes an application for dispute resolution and satisfies an arbitrator through evidence proving that all of the deficiencies have been rectified.

In addition to the above, I find that the tenant's claim for compensation for the cost of the emergency repairs must be determined.

Section 33(1) defines "emergency repairs" as repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. Under the Act, a tenant has the right to have emergency repairs made when all of the certain conditions are met.

In this situation, I find that the door repair would qualify as an "*emergency repair*", and therefore the tenant is entitled to be reimbursed \$52.50 by the landlord, if this has not yet been done. I order that the tenant's rent be reduced by a **further amount as a one-time abatement** of \$52.50 for the next rent payment due to the landlord in addition to the reduction imposed above.

The landlord is ordered to comply with section 29 of the Act in regard to giving the tenant 24-hours written Notice to enter the unit.

The tenant's request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent dated August 12, 2014 is granted and I order that the Notice is of no force nor effect.

The landlord is hereby ordered to inspect and complete any undone or improperly completed repairs.

I hereby grant the tenant's request for a rent abatement pending the repairs with a reduction of \$75.00 per month beginning November 1, 2014 and continuing until the landlord obtains an order from Residential Tenancy Branch restoring the previous rental rate to \$950.00 by proving that all repairs are done.

I further order reimbursement of \$102.50 to the tenant from the landlord, for the cost of the \$52.50 emergency door repair and the \$50.00 cost of this application. I order that this be satisfied with a further one-time abatement of \$102.50 from the already reduced rent for November 1, 2014.

Conclusion

The tenant is successful in the application and the Ten Day Notice to End Tenancy for Unpaid Rent is cancelled. The tenant also received an order forcing the landlord to do repair, a rent abatement pending the completion of repairs and reimbursement for emergency repairs paid for by the tenant.

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: October 2, 2014

Residential Tenancy Branch

