



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The hearing was lengthy. Both parties asked that I make my determination without the requirement of a further adjournment..

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for repairs?
- b. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- c. Whether the tenant is entitled to a monetary order?

Preliminary Matters:

The parties have been involved in a dispute over the alleged failure of the landlord to make repairs to the rental unit in a timely fashion. The Application for Dispute

Resolution seeks a repair order. However, the tenant stated at the hearing that she intends to vacate the rental unit on November 15, 2014 and she does not want the landlord to interrupt her peaceful enjoyment of the rental unit by making the repairs. The tenant stated that she wished to withdraw her claim for repairs. As a result I ordered that the application for repairs be dismissed as withdrawn.

Background and Evidence

The parties entered into an agreement in writing that provided that the tenancy would commence on December 15, 2009. The rent is \$1200 per month payable in advance on the 15th day of each month. The tenant paid a security deposit of \$625 at the start of the tenancy.

On October 19, 2012 the tenant experienced a flood from that originated in a rental unit 2 stories above. The restoration company was called and they were on site for 12 days completing the drying of the rental unit. There is significant damage that needs to be remedied. The tenant seeks a monetary order to compensate her for the reduced value of the tenancy as the damage has not been remedied. The landlord states they have no problems remedying the damage but that the tenant has on many occasion either not been home to give them access or has refused to give them access.

The tenant has broken down the value of her tenancy according to certain rooms and then she submits what would be reasonable compensation where there is damage to a particular room. The tenant seeks the following monthly compensation:

- Compensation of \$100 of an estimated value \$300 for 24 months for a total of \$2400 for the 1st bedroom. The tenant and her daughter slept in this room. The damage was not as great as other room. The carpets were to be removed but they were unable to do so because her household items were moved out of other rooms and placed in this room.
- Compensation of \$300 of an estimated value of \$300 for 24 months for a total of \$6600 for bedroom #2. This room was subject to the greatest damage. The

closet began swelling. The carpet had the most damage and they began to give off a sour smell. The bedroom poses a health risk and they no longer used it.

- Compensation of \$150 of an estimated value of \$150 value for 24 months a total of \$3300 for the bathroom. The lighting over the vanity gave out due to the electrical wiring not working. The cupboard, sink, toilet paper holder and counter were removed. Several large holes were drilled in the wall to suck out the moisture. The curtain rod was removed. The crown moulding around the wall and the base have been removed and have not been re-installed..
- No compensation for the kitchen of an estimated value of \$150.
- Compensation of \$100 of an estimated value of \$100 for 24 months for a total of \$2400 for the living room. The laminate flooring had to be removed. Pictures and decorations were removed from the walls. The TV was disconnected because of fear of water in the walls.
- No compensation for the laundry which had an estimated value of \$50

The tenant seeks compensation as follow which is not related to the water damage.

- \$50 for the loss of use of the dishwasher for 10 months for a total of \$500.
- \$50 for the denial of access to the storage for 12 months for a total of \$600.
- \$50 for the denial of access for parking for 54 months for a total of \$2600.

The tenant pays rent of \$1200. She seeks compensation totalling \$19,400 in total plus 15% of her rental cost for pain and suffering totalling \$2910 for a total of \$22,310.

The landlord does not dispute that repairs need to be made. However, he presented considerable affidavit and viva voce evidence of attempts made by the landlord to contact the tenant to arrange a time to make the repairs and the tenant failing to be present to allow the landlord in. The tenant presented considerable evidence to dispute the allegations made by the landlord.

Analysis:

The tenant sought compensation for the reduced value of the tenancy caused by the landlord's failure to make repairs in a timely manner after the tenant's rental unit was damaged by a water leakage coming from an apartment two stories above her. I determined the tenant is entitled to compensation but not as much as claimed based on the following:

- I determined the landlord had an obligation to make repairs of the rental unit in a timely manner and he failed to make those repairs as required under the Act..
- I determined the tenant was not as diligent as she should have been to give the landlord access so that the work could be completed.
- I do not accept the submission of the landlord that the tenant is entirely at fault for his failure to make repairs in a timely manner. It has been more than 2 years since the leak. The repairs have not been completed. A reasonable landlord would have been much more proactive in making the repairs.

- Section 7(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

- In my view this imposes a statutory obligation on the tenant to act reasonably including an obligation to file an Application for Dispute Resolution to seek a repair in a timely manner.
- I note that the tenant filed an Application for Dispute Resolution that was heard on December 10, 2013. The application sought to cancel a Notice to End Tenancy and other relief. The arbitrator severed the tenant's claim for a monetary order and other relief and the parties negotiated a settlement with regard to the Notice. However, it was incumbent on the tenant to file a separate application for a repair order and monetary order in order to fulfill her obligation to mitigate.

- I do not accept the tenant's estimated allocation of value and her estimated value of loss. **In my view the tenant is entitled to compensation in the sum of \$400 per month for the reduced value of the tenancy for 6 months for a total of \$2400.** I determined that had the tenant acted reasonably in giving the landlord access and filing an Application for Dispute Resolution in a timely manner it is reasonable to expect that the problems would have been repaired in six months.

The tenant seeks compensation in the sum of \$50 per month for 10 months for a total of \$500 for the failure of the landlord to fix the dishwasher in a timely way. The tenant advised the landlord there was a problem with the dishwasher at the end of January 2010. The landlord testified he contacted a repair person who attended within a few days. The tenant was not at home as agreed. Eventually the repair person turned at the end of February and the work was completed at that time. I am satisfied that the problems with the dishwasher were not fully resolved under October. After carefully considering all of the evidence I determined the tenant is entitled to \$250 for this claim.

I dismissed the tenant's claim of \$50 per month for 12 months totalling \$600 for the loss of storage. The tenant failed to prove she sufficiently advised the landlord that a problem existed and she failed to prove a loss.

The tenant seeks compensation in the sum of \$50 per month for 54 months totalling \$2600 for the loss of a parking spot. She testified that in December 2009 she advised the landlord that her fob giving her access to the parking lot was not working and that she was not able to park her car in the stall reserved for her. I determined the tenant is entitled to \$200 for this claim. Had the tenant properly mitigated her loss and filed an Application for Dispute Resolution in a timely manner the matter would have been dealt with within 4 months.

The tenant has failed to present sufficient evidence to establish she is entitled to a reduction of 15% of her rental cost for pain and suffering and loss of enjoyment of life from October 2012 to October 2014 and this claim is dismissed.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$2850.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 26, 2014

Residential Tenancy Branch

