



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, REP, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing and called one witness, and each gave affirmed testimony. The tenant also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. However, despite being served with the Tenant's Application for Dispute Resolution, evidence and notice of hearing documents on October 29, 2014 by registered mail, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and the only participants who joined the call were the tenant and the tenant's witness. The tenant testified that the landlord was served in that manner and on that date and provided a tracking number and tracking history from Canada Post, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and the independent testimony of the tenant and the tenant's witness have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to make repairs to the rental unit and property?
- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this 1 year fixed term tenancy began on July 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The tenant further testified that several repairs are required on the rental property. The posts on the fencing on the back patio are completely rotten and 4 of them have broken off. The tenant brought it to the attention of the landlord during the walk-through before moving in and the landlord promised to have someone fix them. A contractor attended, but didn't fix them and when the tenant told the landlord about it, the landlord replied that the tenant's expectations were too high. Also, the tenant's child is 4 years old and peeks through the slats and fell through onto the ground. The tenant put a chair in front of it, but the kids play and almost had another accident. The tenant put up more furniture to prevent the kids from getting hurt. Photographs have been provided.

The tenant further testified that the major concern is the electrical outlets next to the patio outside. Whether or not it is related, the tenant's computer shuts down and back on and the electricity goes out. The tenant has checked the panel and the breaker was turned off. It happened twice, and the tenant requests an order that the landlord have the outlet covered and checked to ensure it's safe and there's nothing faulty. The tenant addressed it with the landlord and another repair fellow made a note of it, but didn't fix it.

One light bulb in the kitchen over the sink is also exposed, and the tenant has provided a photograph showing that the fixture is falling out of the ceiling. The tenant also testified that a bulb in the bathroom has burned the fixture on the wall, and the light flickers. Again, the tenant told the landlord that there's something wrong with the electrical, but the landlord gave the same response, that the tenant is exaggerating. Also, there is no cover on the light outside the front door, and the tenant questions if it's even legal.

The tenant also testified that the fridge is not working correctly and water from the freezer runs into the fridge and food in the fridge part freezes and water pools under the vegetable crispers in the bottom of the fridge. Every day the tenant has to clean up the water. Two technicians have checked it, and the first one said there's too much ice, a pipe is frozen and it's not draining properly. The technician drained it and less than 2 or 3 weeks later it happened again. A second technician checked it and said that the piping is clogged, freezes up and prevents proper drainage. Both technicians took off the panels and said it should work fine, but it still happens. The landlord told the tenant to buy a fridge and leave the landlord's fridge in the garage and put it back when the

tenant moves out, but that is not the agreement. The tenant collects water daily in a bucket and has to clean the fridge daily.

The tenant also talked to the landlord about black mold in the bathroom and stated that the toilet is leaking from under the base and the tenant can see a ring around the bottom. Also, someone used a greasy substance rather than calking in the bathroom, which is obviously not the correct substance to use and is coming off in the corner of the shower.

The tenant also testified that the washer flooded the first floor of the rental unit and the landlord put in a new washer, which now drains into the sink. The tenant requests an order that the landlord connect it properly to the drain pipe.

The tenant also testified that the fire alarm in the rental unit doesn't work. The tenant put in a new battery and it still doesn't work.

The tenant testified that a move-in condition inspection report was completed at the outset of the tenancy but the tenants did not receive a copy. All items were noted at that time except the toilet because it wasn't noticed that it was actually leaking.

The tenant and spouse have a building maintenance company and invoiced the landlord for the work completed by them, and the landlord agreed over the phone. The landlord told the tenant to take care of it. The tenant charged for the time and felt it was reasonable at \$35.00 per hour. A copy of a letter addressed to the landlord requesting the repairs has also been provided, as well as 2 invoices in the amount of \$2,425.85 and \$4,615.80.

The tenant requests a monetary order and a reduction in rent to off-set that monetary amount.

The tenant's witness is the spouse of the tenant who also lives in the rental unit and testified that the tenants have to keep the fridge empty due to the pooling and freezing. The landlord agreed that the tenants complete the repairs and give the landlord an invoice. The witness has a maintenance company and charges \$35.00 per hour for cleaning and \$55.00 per hour for maintenance and repairs. Part of the invoice is for cleaning gutters in the amount of \$350.00 at \$55.00 per hour.

Analysis

The *Residential Tenancy Act* requires a landlord to maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and complies with housing standards required by law. In this case, I am satisfied that the landlord has not entirely complied with the *Act*, and it is clear from the photographs that repairs are required. I hereby order the landlord to:

- replace the entire fencing around the back patio,

- have the outlet next to the patio outside covered and checked by a qualified electrician to ensure it's safe and there's nothing faulty, as well as the light in the bathroom and the light fixture over the kitchen sink;
- put a cover on the light over the kitchen sink and the lights outside the front door.

I also accept the testimony of the tenant that the landlord has attempted to have the fridge repaired, but attempts have failed to show any success for longer than short periods of time, and therefore I order the landlord to:

- replace the fridge with one of similar size in good working order.

I further order the landlord to:

- repair the toilet;
- remove the calking substance in the bathroom;
- clean the mold, and
- replace the calking with a proper calking substance.

I also order the landlord to:

- connect the washing machine properly to the drain pipe, and
- replace the fire alarm.

The *Act* also states that a party may make a claim against another party for failure to comply with the *Act*, however in order to be successful in such a claim the onus is on the tenant in this case to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate such damage or loss.

I am satisfied that the tenant has made efforts to mitigate by doing some work himself and placing furniture against the patio fencing. Having found that the landlord has failed to comply with the *Act*, I am also satisfied that the tenant has established elements 1 and 2.

With respect to the amount, the tenant has a maintenance company and testified that the work completed by the tenant was charged to the landlord by way of invoices at the rate the tenant charges in the business. The tenant also testified that all of the repairs requested were noted on the move-in condition inspection report except for the leak in the toilet because it wasn't noticed at the time. Although I am not satisfied that the landlord agreed to pay the tenant the rates normally charged by the tenant's business, or that the tenant's business normally charges those rates, or that the rates are necessarily reasonable, I am satisfied that the tenant is entitled to compensation. The

tenants have applied for a monetary order for what is almost the equivalent of all rent paid to the landlord. The tenants have enjoyed a home for the family, however considering the electrical concerns and no fire alarm in the rental unit, and considering the testimony that almost all of the repairs required were noted by the parties at move-in and the landlord has not addressed them in the 6 months of the tenancy, I find that the tenant has established a monetary claim for the landlord's failure to make repairs in the amount of \$2,400.00, being 25% of the rent for 6 months of the tenancy.

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

Conclusion

For the reasons set out above, I hereby order the landlord to make the repairs set out above promptly and by January 31, 2015. If the landlord fails to have the repairs completed by that date, the tenants will be at liberty to apply for other relief.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,450.00. This may be deducted from future rent payable to the landlord or otherwise recovered.

These orders are 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: December 17, 2014

Residential Tenancy Branch

