



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Li-Car Management Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

RR; FF

Introduction

This is the Tenant's application for a reduction in rent; and to recover of the cost of the filing fee from the Landlord.

The parties gave affirmed testimony.

This matter was initially convened on September 16, 2014. It was determined that the Tenant served the Landlord's agent with the Notice of Hearing documents and copies of her documentary evidence by registered mail sent on August 15, 2014. The Tenant provided a copy of the registered mail receipt and tracking numbers in evidence.

It was also determined that the Tenant received the Landlord's evidence package on August 28, 2014.

The matter was adjourned to November 19, 2014, for the Tenant to provide the Residential Tenancy Branch and the Landlord's agent with a copy of the tenancy agreement and a copy of the Condition Inspection Report.

Preliminary Matter

At the outset of the reconvened Hearing, the Landlord's agent LP testified that they are no longer agent for the Landlord as of October 31, 2014. The Landlord confirmed that they are no longer his agent. Pursuant to the provisions of Section 64 of the Act, I amended the Tenant's application to include the name of the Landlord.

The Tenant stated that she doesn't have a contact number or address for the Landlord. The Landlord gave his address during the teleconference.

Issues to be Decided

- Is the Tenant entitled to a rent reduction and if so, in what amount?

Background and Evidence

The rental property is a house with two suites. The Tenant lives in the upstairs suite, which is approximately 900 square feet. The rental property includes a deck and a back yard. The back yard is approximately 1,100 square feet. The parties disagreed with respect to the size of the deck. The Tenant stated that it was approximately 3 meters by 6 meters; the Landlord testified that it was only approximately 1.4 meters by 4 meters.

This tenancy began on August 1, 2013. Monthly rent is \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$425.00 at the beginning of the tenancy.

The Tenant testified that there were repairs which were required, and which were identified on the move-in Condition Inspection Report, at the beginning of the tenancy or shortly thereafter. These repairs included:

- Fence and gates
- Dangerous holes in yard
- Loose railing, damaged surface and exposed metal edges on deck
- No outdoor light, but exposed wires
- Removal of garbage from the shed and yard

The Tenant stated that the advertisement for the rental unit indicated that the tenant would have shared use of the yard, a fenced yard, shared use of the shed, and a renovated suite and deck. She testified that she has been unable to use the yard because of at least a dozen dangerous holes ranging in size from 3 inches to a foot deep. In addition, she said that there is garbage all throughout the yard from the renovations, including wire, metal fragments, pipes, broken glass, large pieces of wood, nails, screws, and rusty tools. The Tenant testified that she has not been able to make use of the deck either because it is in such bad repair. The Tenant provided photographs in evidence in support of her application.

The Tenant stated that she has a dog and the loss of use of the yard and the lack of a secure fence and gates has impacted her enjoyment of the rental property.

The Tenant stated that she made many attempts to address these issues with the Landlord's agents, and that they agreed that the repairs were required and were promised but that there were a number of staff changes which delayed the process and that the agents were trying to sort out the cost with the owner of the property. The Tenant stated that she sent letters in September and October, 2013, as well as in January and February, 2014.

The Tenant seeks a rent abatement and reduction of \$200.00 per month for loss of the value of the tenancy.

The Landlord testified that there was a fire at the rental property, which lay vacant for four years afterwards. He stated that he spent \$40,000.00 on renovations to the interior space. The

Landlord stated that his former agent was in charge of the tenancy. The Landlord stated that his former agent got a quote to repair the deck, but that it was too high. He stated that he had a contractor in mind to do the repairs but that his contractor was sick. The Landlord testified that he had to go overseas because his father was very sick. The Landlord stated that he came back from overseas "last week" and was surprised and disappointed that the repairs were not done because he told his agent to hire a professional to do the job. The Landlord apologized to the Tenant and stated that he would go to the rental property "tomorrow, Thursday this week" to attend to the yard and start the repairs on the deck.

Analysis

Section 32 of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Based on the Tenant's testimony and documentary evidence, I find that the Landlord did not comply with Section 32 of the Act. Based on the evidence, I also find that the Landlord breached the tenancy agreement by not making the required and promised repairs at the beginning of the tenancy and that the Tenant has suffered a loss of use of the rental property as a result of the Landlord's breaches.

Having found that the Landlord has failed to comply with Section 32 of the Act, and based on the Tenant's testimony and documentary evidence, pursuant to Sections 62(3) and 32 of the Act, I Order the Landlord to do the following:

- Hire a professional contractor to repair the deck and railing and install a fully functioning outdoor light.
- Remove all debris from the yard and the shed.
- Fill in the holes in the lawn.
- Repair the fence and the gates so that the yard is fully enclosed.

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that the value of the tenancy has been diminished as a result of the Landlord's failure to comply with Section 32 of the Act. I find that the Tenant has not had use of yard, shed or deck since the beginning of the tenancy and that she is entitled to a rent abatement of \$150.00 per month and a future rent reduction of \$150.00 per month until all of the repairs set out above are completed **and the Landlord is successful in an application to have the rent reduction stopped**. To be clear, once the Landlord has completed these repairs, the onus is on the Landlord to be successful in an Application for Dispute Resolution that the rent reduction should cease.

Therefore, I calculate the total rent abatement as follows:

\$150.00 x 17 months (Aug, 2013 to and including Dec, 2014) \$2,600.00

I find that the Tenant is entitled to compensation in the amount of **\$2,600.00, which she may deduct from future rent due to the Landlord.**

The Tenant has been successful in her application, and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord. This award may also be deducted from future rent.

For clarity, effective January 1, 2015, and until the Landlord is successful in an application to have the rent reduction stopped, rent will be **\$700.00**. The Tenant may deduct a total of **\$2,650.00** from future rent due to the Landlord.

Conclusion

I Order the Landlord to:

- Hire a professional contractor to repair the deck and railing and install a fully functioning outdoor light.
- Remove all debris from the yard and the shed.
- Fill in the holes in the lawn.
- Repair the fence and the gates so that the yard is fully enclosed.

I find that the Tenant is entitled to rent abatement and recovery of her filing fee in the total amount of **\$2,650.00**, which she may deduct from future rent due to the Landlord. Commencing January, 2015 and until the Landlord is successful in an application to have the rent reduction stopped, rent will be **\$700.00**.

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 12, 2014

Residential Tenancy Branch

