



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of facilities that are included in the tenancy agreement.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Was the landlord negligent with regard to maintenance of the rental unit? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on July 31, 2013. The monthly rent is \$1,635.20 payable on the first of each month. The tenant has applied for compensation for the loss of use of the dishwasher and the shower during the period of repairs and for loss of privacy when the landlord entered the rental unit.

The tenant stated that the dishwasher did not drain properly and caused food residue to remain inside which resulted in a foul odour emanating from the dishwasher. The tenant informed the landlord of the problem on May 07, 2014 and did some research on a manufacturer's recall of the machine. The landlord requested information regarding the model make and number and the tenant supplied this information on May 17, 2014.

On June 02, 2014, the landlord authorized the tenant to follow up on the repairs through the manufacturer and the tenant agreed to do so. On June 09, the tenant advised the landlord that the problem was not covered by the manufacturer and asked the landlord to let him know how the landlord would like him to proceed with scheduling repairs.

The landlord replied that she was out of town and would schedule repairs upon her return in July.

On June 12, 2014, the tenant informed the landlord by email that the problem was serious enough to have the potential for flooding and/or fire. The landlord requested the tenant to refrain from using the dishwasher until it was repaired. The landlord also added that the repairs would be taken care of upon her return in July.

The repair was carried out on July 16, 2014. The tenant is claiming \$200.00 for the loss of use of the dishwasher for the period of June 12 to July 16, 2014.

On July 04, 2014, the tenant reported deteriorated grout in the shower stall which resulted in the seepage of water into the wall, behind the loose tiles. The landlord instructed the tenant to stop using the shower immediately. The landlord contacted a repair man and made an appointment for July 16, 2014. The shower was next available for use on July 25, 2014. The tenant is claiming \$450.00 for the loss of use of the shower for the period of July 04 to July 25, 2014.

The tenant agreed that there is a bath tub inside the rental unit which was available for use in addition to common shower facilities within the apartment building. The tenant stated that using the alternative facilities caused him a great deal of inconvenience.

Both parties agreed that the landlord notified the tenant via email on July 15, 2014 of an appointment on July 16, for the repair man to assess the damage to the bathroom wall. However, the tenant was not expecting the landlord to be present and stated that the landlord knocked and used her key to enter the rental unit before the tenant could even stand up to respond to the knock. The tenant stated that he considered this to be an invasion of his privacy and was claiming \$100.00 as compensation.

Analysis

Based on the sworn testimony and documentary evidence of the both parties, I find as follows:

The tenant first notified the landlord of the dishwasher problem on May 07, 2014. After some back and forth correspondence, on Jun 02, the landlord authorized the tenant to go ahead with scheduling the repairs through the manufacturer. On June 09, the tenant informed the landlord that the manufacturer would not repair it under the recall. The landlord replied that she would take care of the problem upon her return.

On June 12, in reply to the tenant's information about the severity of the problem the landlord instructed the tenant to stop using the machine. The machine was fixed on July 16, 2014.

Based on the above, I find that the tenant was without the use of the dishwasher for the period of June 12 to July 16, 2014 because the landlord was out of town and did not appoint a representative to take care of her rental property. The dishwasher is a service that is included in the rent and therefore I find that without this service, the tenant suffered a loss in the value of the tenancy.

On July 04, 2014, the tenant informed the landlord of the deteriorated grout and loose tiles in the shower stall. The landlord instructed the tenant to stop using the shower and had a repair man assess the problem on July 16, 2014. The repair work was completed on July 25, 2014. Therefore I accept the tenant's testimony that he did not have the use of the shower for the period of July 04 to July 25, 2014. However even though the tenant did have a bath tub inside the rental unit that was available for use and also had shower facilities that were available for use by all occupants of the building, I find that the repair was not conducted in a timely manner thereby resulting in a loss of use of the shower for 21 days. I further find this loss of use of the shower caused the tenant some inconvenience thereby resulting in a loss of the value of the tenancy.

If a landlord is out of the country and otherwise unable to attend to their duties as a landlord in this or any other regard, the landlord should ensure that an agent is available to comply with the *Act* on the landlord's behalf within the specified time limits.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through fault or no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent. In this case I find that a breach of contract occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenant is entitled to a reduction in rent for the period that he suffered the loss of use of the dishwasher and the shower.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on *Residential Tenancy Policy Guideline #16 and #22*, and taking into account the time that the landlord took to restore the facilities and that the tenant did have alternative options to shower, I find it appropriate to award the tenant a minimal award of \$200.00 for the inconvenience endured by him due to the loss of use of the dishwasher and the shower.

Based on the testimony of both parties, I find that the landlord notified the tenant in a timely manner, that a repairman would be visiting the unit and therefore by attending the unit along with the repairman does not constitute a breach of the privacy of the tenant. Accordingly the tenant's claim for \$100.00 is dismissed.

The tenant has established a claim of \$200.00 for the loss of the use of the dishwasher and the shower.

Conclusion

The tenant may make a onetime deduction of **\$200.00** from a future rent.

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 30, 2014

Residential Tenancy Branch

