



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, PSF, MNDC

Introduction

This hearing was scheduled to deal with a tenant's application for repair orders and orders for the landlord to provide services or facilities required by law; and, monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is it necessary to issue orders to the landlord with respect to making repairs and/or providing services or facilities?
2. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenant began living in the rental unit approximately 5 years ago under a tenancy agreement with the former landlord. In January 2014 the tenant and the current landlord entered into a new tenancy agreement after the current landlord purchased the property. The rental unit is a townhouse style unit and there are four units in the building. The tenant is required to pay rent of \$500.00 on the 1st day of every month and the tenant is obligated to pay his own utilities such as hydro and gas.

As part of his hearing package, the tenant provided a document dated March 10, 2015 whereby the tenant lists: repairs to be made; keys he would like provided to him for two exterior doors; and a request for the landlord to install a larger electric hot water tank. The tenant stated that he served the landlord with a similar list in May 2014 during a dinner attended by both parties at the town hall but that the landlord has not made any of the repairs.

The landlord acknowledged that he saw the tenant at the dinner at the town hall in about May 2014 but stated the tenant did not hand him a list of repairs. Rather, the landlord testified that the only time the tenant has given him a list of repairs when he was served with the tenant's

hearing package for this proceeding. Upon review of the list, the landlord acknowledged that he was aware that the tenant was unsatisfied with the amount of hot water supplied by the electric hot water tank but that this was the first he had heard of the other issues raised by the tenant.

With respect to hot water, the landlord testified that the element had burnt out on the electric hot water tank which the landlord replaced. After that, the tenant started to complain that the tank was too small. The landlord testified that hot water for the rental unit is provided by way of two hot water tanks in the basement of the rental unit: a small electric tank and a gas fueled tank that are both functional; however, the tenant refuses to obtain a gas account even though gas is also required to run the furnace in the rental unit. The tenant acknowledged that there is a gas powered hot water tank available for his use but testified he cannot afford to obtain a natural gas account.

The landlord was agreeable to attending the rental unit to inspect the unit and make an assessment of the repairs that are necessary. The landlord also agreed to ensure the tenant has keys to all of the exterior doors leading into the rental unit. However, the landlord raised a concern about the tenant's previous abusive conduct toward him in the past. The tenant had also asserted the landlord, or landlord's agent, had been verbally abusive to him in the past by making derogatory comments to him.

Given the mutual comments concerning inappropriate conduct during previous visits at the rental unit, the parties were cautioned that inappropriate conduct by either party is not acceptable. The landlord's right and obligation to enter and make necessary repairs was discussed with the parties as was the landlord's obligation to either obtain the tenant's verbal consent prior to entering the unit or giving the tenant written notice of entry as provided under section 29 of the Act. The tenant was cautioned that he must not interfere with the landlord's efforts to repair the unit to which he indicated he understood.

The tenant submitted that the landlord's failure to make repairs to a loose handrail caused him to fall on the stairs on February 7, 2015 and that he hit his chin in the fall and broke his upper dentures. The tenant submitted that his broken dentures and inconvenience of having to eat soft foods for three weeks is the basis for his \$500.00 monetary claim against the landlord. I noted the tenant had not provided any medical or dental records to corroborate an injury to the tenant or cause of the broken dentures and did not provide an invoice or receipt for the purchase of new dentures. The tenant stated that he has received new dentures but that he has not yet paid for them. The tenant further explained that he is on disability income assistance and that disability will pay 20% of the cost and he is responsible for the other 80%.

The landlord testified that the first he heard of the tenant's fall and broken dentures was when the tenant served him with this Application for Dispute Resolution.

Analysis

A landlord and tenant both have obligations to repair and maintain a property under section 32 of the Act. I have reproduced section 32 below with emphasis added to the landlord's obligations for purposes of this decision.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[my emphasis added]

Where a tenant is in need of repairs, in order to mitigate the tenant's losses the tenant is expected to notify the landlord of the issue in need of attention. Upon notification, the landlord is afforded a reasonable amount of time to make the appropriate repair. Failure of a landlord to make repairs within a reasonable amount of time after receiving notification may be a basis for a tenant to seek monetary compensation from the landlord.

In this case, I was only provided disputed testimony that the tenant gave the landlord a list of repairs in May 2014 and I am not persuaded by the disputed verbal testimony without further evidence to support the tenant's contention.

It was undisputed, however, that the landlord is now in receipt of a list dated March 10, 2015 whereby the tenant identifies issues that require repair or the landlord's action. I find it is now upon the landlord to inspect the rental unit and assess the necessary repairs so as to comply with section 32 of the Act, with the exception of the hot water supply. Based upon the undisputed testimony of both parties that a second hot water tank is available for the tenant's use I am not satisfied that the landlord has violated the Act by failing to provide sufficient hot water. Rather, I find the tenant's experience of having a very limited quantity of hot water is due to the tenant not obtaining gas service at the rental unit. The tenant's income, or lack thereof, does not in my view translate into an obligation of the landlord to provide a different hot water system when the current system is functional.

In light of the above, I make the following orders to the landlord:

- 1. Within one week of receiving this decision the landlord, or landlord's agent, is to attend the rental unit for purposes of inspecting the rental unit and assessing the repairs that are necessary to ensure compliance with the landlord's obligations under section 32 of the Act.**
- 2. Within a reasonable amount of time after the inspection and assessment described above is complete, the landlord must make the necessary repairs identified and determined to be necessary by the landlord; and, the landlord must provide the tenant with a key for each of the exterior doors of the rental unit.**
- 3. Entry into the rental unit by the landlord, or landlord's agent, must be accomplished in a manner that complies with section 29 of the Act.**

I also order that the tenant must not interfere with the landlord's efforts to repair and maintain the property where the landlord has obtained the right to enter the rental unit under section 29 of the Act.

Below, I have reproduced section 29 of the Act for the parties' further reference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[my emphasis added]

Should either party fail to comply with the orders I have made, the parties are at liberty to file a subsequent Application for Dispute Resolution to seek further remedy.

Finally, with respect to the tenant's monetary claim against the landlord, I find the tenant failed to provide sufficient evidence to meet his burden of proof as an applicant. Where a party makes an application for monetary compensation against another party the applicant has the burden to prove the following under sections 7 and 67 of the Act:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenant did not provide medical or dental records to point to an injury or reason for the broken dentures, the did not provide evidence to corroborate his tenant cost or loss

associated with the broken dentures; and the tenant did not provide satisfactory evidence to demonstrate that he attempted to mitigate his losses by requesting repairs to the handrail before February 7, 2015. For these reasons, I found that the tenant failed to establish that the landlord is responsible for paying the tenant \$500.00 for new dentures.

Conclusion

I have issued orders to both parties by way of this decision. The tenant's monetary claim has been dismissed.

The parties are at liberty to file a subsequent Application for Dispute Resolution if the other party fails to comply with my orders.

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: April 23, 2015

Residential Tenancy Branch

