



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to comply with the Act, regulation or tenancy agreement and allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. Although served with the Application for Dispute Resolution and Notice of hearing by registered mail the landlord did not appear.

Issue(s) to be Decided

Is the tenant entitled to any of the orders requested and, if so, on what terms?

Background and Evidence

This tenancy commenced July 2013 and the monthly rent is \$575.00. The rental unit is one of six townhouses in the complex. The tenant's unit is one of the middle ones. The rental unit is located in a small community. The tenant is on a disability pension, as are most of the other residents of the complex.

In 2014 the tenant applied for a repair order. In a decision dated May 12, 2014, the landlord was ordered to:

1. Hire a licenced, professional pest control company, no later than May 20, 2014, to correct the rodent infestation as recommended by the licenced, professional pest control company and to issue a written report when the process has been completed and that the rental unit is free from rodents;
2. Provide a copy of the pest control company's report to the tenant; and,
3. Repair or replace the refrigerator by May 20, 2014.

The landlord did nothing so the tenant applied for a rent reduction. In a decision dated October 21, 2014, the arbitrator found that the landlord had failed to comply with the previous order. He also found that the following repairs to the rental unit were required:

1. Replacement of the floor coverings in both bedrooms, stairs and living room.
2. Replacement of the cracked, unstable toilet seat.

3. Replacement of the back door with the door that is currently stored on the premises.
4. Replacement of the broken window in the bathroom.
5. Trimming of the overgrown tree in the front yard.

The arbitrator ordered that commencing November 1, 2014, the rent was to be reduced by \$200.00 per month to \$375.00 “until the first day of the month following the landlord’s full compliance with Arbitrator Vaughn’s order and full completion of the foregoing five listed repairs.”

This order was sent to the landlord by registered mail. The registered mail was not picked up.

In November 2014 the landlord replaced the refrigerator.

The tenant has tried to pay her rent. The landlord does not live in this community so she sends it by mail, through her advocate.

In a letter dated November 19, 2014, sent by registered mail the advocate sent the December rent cheque. The cheque was in the amount of \$175.00 reflecting the \$200.00 per month rent reduction for November and December. The records of Canada Post show the item was mailed on November 19, 2014 and was signed for by the landlord on December 22, 2015.

The landlord and the tenant’s advocate had a telephone conversation on January 21, 2015 wherein he claimed that he had not received the cheque for \$175.00 or the January rent cheque, which had been sent by ordinary mail.

In a registered letter dated January 22, 2015, the advocate sent the landlord the tenant’s replacement cheque for the December and January rents and a post-dated cheque for the February rent. Another copy of the October decision was also included with the letter. The records of Canada Post show that the item was mailed on January 22, 2015 but was never picked up.

On February 26, 2014, a lawyer working with the advocate sent the landlord a letter advising that since the landlord was refusing to accept the rent cheques:
“she will be paying her rent into my trust account in trust for you. These funds will be immediately paid to you once you contact me and provide me with the means to do so. Due to the costs that have been incurred for registered mail, we require information for a direct deposit into your account. I will continue to hold the funds in trust for you until I

hear from you. I will draw this letter to the attention of any Tribunal or authority if you attempt to evict my client for non-payment of rent.”

There has been no response from the landlord.

On April 1, 2015, the tenant filed this application for dispute resolution. It was sent to the landlord by registered mail. The records of Canada Post show that the item was never picked up.

The tenants advised that no repairs to the unit have been made. She has been able to obtain a quote from the only person in this small community who was prepared to submit a quote for the entire suite of repairs required; excluding pest control. According to the advocate this individual is well-qualified and does a lot of work for seniors in this community. The quote is for \$5370.75 including labour, materials and tax.

The tenant advised that the rodent situation has become worse. The garbage for the entire complex was not picked up for six weeks this spring. Her information was that the landlord was so far in arrears on his account to the garbage company that they refused to provide further service until the account was paid. The garbage was finally picked up around the beginning of May but the rat population exploded during this time.

The tenant did have a pest control company look at her unit. She was advised that unless all the units in the complex were addressed any action directed at just her rental unit would not be as effective.

As of the date of the hearing, the sum of \$3000.00 had accumulated in the lawyer's trust account.

The tenant would like to have the funds in the trust account spent on repairs, as set out in the quote. The highest priority items could be completed with the funds currently in the trust account and as funds accumulate, the remaining repairs could be completed.

The tenant and her advocate advise that the lawyer is prepared to act as the trustee.

Analysis

Section 65(1)(b) of the *Residential Tenancy Act* allows an arbitrator who finds that a landlord has not complied with the Act, regulation or tenancy agreement to order that the tenant must deduct an amount from rent to be expended on maintenance, repairs, services or facilities.

Two previous arbitrators have found that the landlord has not complied with section 32 of the *Residential Tenancy Act*, namely the landlord's obligation to maintain the rental unit, and the evidence is clear that he is still in a state of non-compliance. Accordingly, I order that the funds currently in the lawyer's trust account, and any funds paid into the lawyer's trust account in the future be expended on the repairs set out in the October 21, 2014 decision. The rent payments into the lawyer's trust account and the payments out of the trust account for repairs are to continue until the repairs are completed.

It has been a year since the landlord was ordered to hire a licenced, professional pest control company to address the rodent problem in the rental unit. Not only has the landlord failed to comply with the order but his neglect has made the situation worse.

If the landlord has not addressed the rodent problem as directed in the May 12, 2014 decision by the time the repairs to the rental unit are completed, the rent will be reduced to \$100.00 per month, starting on the first day of the month after the repairs are completed and continuing until the pest control company provides a report that the problem has been addressed or an order is made by an arbitrator.

Conclusion

Orders allowing the tenant to direct rent payments to repairs has been made and imposing an additional rent decrease if previous orders are not complied with have been made.

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: June 09, 2015

Residential Tenancy Branch

