



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for a repair order, a monetary order, and an order allowing the tenant to reduce the rent for repairs, services or facilities promised but not provided. Although the landlord was served with the Application for Dispute Resolution and Notice of Hearing and filed written evidence for the hearing, it did not appear at the hearing.

Issue(s) to be Decided

- Should a repair order be made and, if so, on what terms?
- Should a monetary order be made in favour of the tenant and, if so, in what amount?
- Should an order reducing future rent be made and, if so, on what terms?

Background and Evidence

This tenancy started June 15, 2013 as a 6.5 month fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent has remained at \$785.00 throughout the tenancy and is due on the first day of the month.

The rental unit is a one bedroom apartment located on the top floor of a four story apartment building. The unit is about 587 square feet. It has a balcony about 11.5 feet by five feet, or 57.5 square feet. The balcony is wooden with a painted plywood floor.

The tenant testified that when she first looked at this unit she noticed that the balcony was showing signs of rot and there was an obvious soft spot in the wooden floor. When she asked the landlord about the balcony she was promised it would be fixed before she moved in.

The tenant agreed to rent the apartment.

Shortly after she moved into the rental unit the tenant informed the building manager of the need for the following repairs:

- The bottom plugs in the kitchen did not work.
- The heat lamp in the bathroom did not work.
- The ceiling of the balcony was inhabited by nesting starlings and the corner of the balcony appears to be damaged by feces.
- The floor of the balcony was soft and a hole had started.

When nothing happened the tenant sent the landlord a letter dated September 30, 2014 wherein she reiterated that the listed repairs were still required.

In response to her letter the property manager, a contractor, and an electrician came to the unit. The electrician was able to get the plugs working. The contractor said the entire balcony was unsafe and needed to be replaced. The tenant was told that replacement of the balcony would start the following week.

When nothing else happened the tenant again wrote the landlord on November 28, 2014. In response to her letter a maintenance person dropped off a heat lamp which she installed and the landlord nailed a piece of unpainted plywood over the soft spot on the balcony floor.

Nothing else happened so on May 15, 2015 the tenant filed this application for dispute resolution. The caretaker and another person came to the unit, jumped up and down on the balcony, shook the railing, told the tenant they would be back, and left. Since then there has been one request for an inspection but the tenant was not going to be home that day so the inspection did not happen.

The tenant testified that she does use the balcony but very sparingly. She has a few light items stored out there and if her company wants to smoke they go on the balcony.

The tenant testified that it appears that water is collecting under the plywood patch and speeding up the deterioration process and the railings appear to be pulling away from the building. The photographs filed by the tenant show a balcony in rough condition.

The tenant also testified that the bottom plugs in the kitchen quit working about a month ago.

Analysis

Section 32 of the *Residential Tenancy 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; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

If a rent unit does not meet this standard an arbitrator may order:

- the landlord to make certain repairs; and,
- that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

The tenant has brought her concerns to the landlord in the most polite and respectful manner but her requests appear to have been ignored.

I order the landlord to:

1. Have the balcony inspected by a qualified contractor within four weeks of being served with this decision; to provide a copy of the contractor's credentials and report to the tenant immediately upon completion of the inspection; and to implement the contractor's recommendations within four weeks of receipt of the inspection, or such further time as may be ordered by an arbitrator.
2. Have the balcony inspected by a qualified pest control company within four weeks of being served with this decision; to provide a copy of the company's credentials and report to the tenant immediately upon completion of the inspection; and to implement the company's recommendations within four weeks of receipt of the inspection, or such further time as may be ordered by an arbitrator.
3. Have the kitchen wiring inspected by a qualified electrician within four weeks of being served with this decision; to provide a copy of the electrician's credentials and report to the tenant immediately upon completion of the inspection; and to implement the electrician's recommendations within four weeks of receipt of the inspection, or such further time as may be ordered by an arbitrator.

I find that the value of the tenancy has been reduced by the fact that the balcony is barely useable. A safe, clean and comfortable balcony represents a greater proportion of the value of an apartment during months of pleasant weather and a lesser proportion during the winter months. Considering the square footage of the unit, the square footage of the apartment, the seasonal variations in use, and the landlord's apparent refusal to properly address the situation I find that the value of this tenancy has been reduced by 14%, or \$117.75 since the start of this tenancy.

I find that the tenant is entitled to payment of the sum of \$2826.00 as compensation for loss of use of the balcony from August 2013 up to and including July 2015 (24 months X \$117.75).

I also order that the rent is to be reduced by \$117.75 per month from August 2015 until the repairs have been completed as ordered. If there is any dispute between the landlord and the tenant as to whether the repairs have been completed the landlord may apply to the Residential Tenancy Branch for an order ending this rent reduction.

As the tenant was successful on her application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file it. This amount is added to the monetary order granted to the tenant.

Conclusion

1. A repair order has been made.
2. A rent reduction has been ordered to continue until the required repairs have been completed.
3. A monetary order in favour of the tenant in the total amount of \$2826.00 has been made. Pursuant to section 72 this amount may be deducted from the rent as it becomes due until paid in full. I am also providing the tenant with a monetary order for this amount. If the tenancy should end for any reason before the full amount has been collected in this manner, the tenant may file the monetary order with Small Claims Court and enforce it as an order of that court.

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: July 07, 2015

Residential Tenancy Branch

