



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

LRE, OLC, RR, and FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for authority to reduce the rent; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order setting conditions on or suspending the Landlord's right to enter the rental unit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on May 28, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The male Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that on May 24, 2015 she submitted two documents to the Residential Tenancy Branch, which she wishes to rely upon as evidence. The Tenant stated that she served these documents to the Landlord with the Application for Dispute Resolution. The male Agent for the Landlord acknowledged receipt of these documents.

The Landlord and the Tenant were advised that I was not in possession of the two documents the Tenant wishes to rely upon as evidence. The parties agreed to proceed with the hearing in spite of the fact I cannot view the documents, after they were each given the opportunity to explain the content of the documents. One document was from the Landlord advising the Tenant she must pay \$41.86 to replace a window screen and the other was a document from the Landlord advising the Tenant she must pay \$37.00 for repairing a toilet.

Both parties were represented at the hearing. They were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenant be given authority to reduce the rent?

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Is there a need to issue an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Tenant is seeking an Order requiring that repairs to a bathtub liner be completed in as short amount of time as is possible and that her rent be reduced in compensation for the inconvenience of the repairs.

The Tenant stated that:

- the lining around the tub is peeling and needs to be replaced;
- she does not think the lining is currently leaking but expects it will leak if the lining is not replaced;
- the male Agent for the Landlord told her that the repairs could take up to four days;
- she believes the repairs should only take one day;
- the repair is very inconvenient as it will interfere with her ability to get ready for work;
- the Landlord has offered her the use of another bathroom in the residential complex while her shower/tub is being repairs, but that is also very inconvenient;
- she has asked the Landlord for a rent reduction to compensate her for her inconvenience, however the Landlord has refused that request; and
- she would prefer that the repairs are started on a Friday morning after 8 a.m. as that will be the least disruptive to her schedule and that they be completed as soon as possible.

The male Agent for the Landlord stated:

- the lining around the tub does not need to be replaced, it simply needs to be re-caulked;
- he will not know if the lining has leaked until he removes the old caulking;
- if there has been no leaking the repair will take approximately 1.5 days;
- if the lining has leaked the repairs could take longer, depending on the extent of the leak and the time needed to dry the area;
- the shower cannot be used until the repair is complete;
- he will repair the area himself;
- he is willing/able to start the repairs on a Friday morning after 8 a.m.;
- the Landlord has offered the Tenant the use of another bathroom in the residential complex while her shower/tub is being repaired;

- he does not believe that the Tenant asked for a rent reduction to compensate for the inconvenience of the repairs, although she may have done so on one of the telephone messages that were “garbled”; and
- he does not believe the Tenant is entitled to a rent reduction, as the Landlord has offered alternative shower options.

The Tenant is seeking authorization to not pay a charge of \$41.86 for a missing screen. The Landlord and the Tenant agree that the Landlord has requested payment in this amount for a window screen.

The male Agent for the Landlord stated that:

- sometime in the summer of 2013 the Landlord noticed that the screen was missing from the master bedroom window of the rental unit, which is on the ground floor;
- markings on the wall and window frame caused him to believe that someone removed the screen to crawl through the window;
- he speculates that one of the Tenant’s sons crawled through the window;
- the Tenant was asked about the screen and he cannot recall if the Tenant was aware of what happened to the screen;
- the Tenant offered to pay for the screen;
- the screen was replaced at as low a cost as possible; and
- the Tenant has still not paid for the repair.

The Tenant stated that:

- sometime in the summer of 2013 she noticed that the screen was missing from a bedroom window of the rental unit, which is on the ground floor;
- she does not know why/how the screen was removed;
- she asked her sons about the screen and neither of them knew what happened to the screen;
- she did not offer to pay for the screen; and
- she does not believe she is responsible for the repair.

The Tenant is seeking authorization to not pay a charge of \$37.00 for a plumbing repair. The Landlord and the Tenant agree that the Landlord has requested payment in this amount for repairing a toilet in December of 2006.

The male Agent for the Landlord stated that:

- in September of 2005 the toilet in the rental unit was plugged;
- he unclogged the toilet on that occasion by removing a partially eaten apple;
- in December of 2006 the toilet in the rental unit was plugged again;
- he unclogged the toilet again by removing a partially eaten apple;
- the cost of the repair included his time and a few parts; and
- the Tenant has still not paid for the repair.

The Tenant stated that:

- in September of 2005 the toilet in the rental unit was plugged with a partially eaten apple;
- in December of 2006 the toilet in the rental unit was plugged again;
- the toilet had been leaking and shifting prior to the toilet becoming plugged;
- she speculates that something broke in the toilet as a result of the shifting, causing the blockage;
- she was present when the toilet was unplugged in December of 2006 and she did not observe the Agent for the Landlord remove an apple;
- she does not believe she is responsible for the repair.

Analysis

Section 32(1) of the *Act* requires landlords 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. I find that the Landlord is acting reasonably and responsibly by repairing the tub lining in the bathroom and that the Landlord has the right to proceed with these repairs, pursuant to section 32(1) of the *Act*.

I find that the Landlord must make repairs to the rental unit in a manner that minimizes disruptions to the Tenant. In these circumstances the Tenant has indicated that beginning the repairs on a Friday morning after 8:00 a.m. would be the least disruptive and I therefore Order that these repairs must commence on a Friday between 8:00 a.m. and 11:00 a.m.

To further minimize disruptions, I Order the Landlord to ensure the repairs are completed in as timely a manner as is possible, giving due regard to the need to ensure the area is dry before the repairs are completed.

Prior to entering the rental unit for the purposes of completing these repairs, the Landlord must give the Tenant proper notice of the Landlord's intent to enter, in accordance with section 29 of the *Act*. Apart from requiring the Landlord to complete this repair on a Friday morning, I see no reason to set additional limits on the Landlord's right to enter the rental unit.

Providing these repairs can be completed in five days and the Landlord provides the Tenant with reasonable alternate shower facilities within the residential complex, I find that the Tenant is not entitled to a rent reduction for the inconvenience of these repairs. In making this determination I have balanced the Tenant's right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises. In my view this inconvenience is temporary and does not breach of the covenant of quiet enjoyment, with the understanding that alternate shower facilities are being provided.

In the event the repair to the tub lining takes more than five days and the Tenant does not in any way contribute to the delay, I authorize the Tenant to reduce the rent by \$5.00 per day until such time as the repairs are complete. I find this to be reasonable compensation for this inconvenience, providing the alternate shower facilities remain available until the repairs are complete. In my view, compensation is warranted after five days as the delay renders the inconvenience of the repair more significant.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* requires a tenant to 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.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant or a guest of the Tenant removed the screen from the bedroom window of the unit. In reaching this conclusion I was heavily influenced by the absence of evidence to support the speculation that the screen was removed by the Tenant or her son(s). Given that the window is on the ground floor, I find it very possible that the screen was removed by a third party attempting to enter the rental unit illegally.

As the Landlord has failed to establish that the screen was removed by the Tenant or a guest of the Tenant, I find that the Tenant is not obligated to pay the cost of replacing the screen.

I find the testimony of the male Agent for the Landlord was forthright and direct and I accept that he unplugged a toilet in the rental unit in December of 2006 by removing a partially eaten apple. I found him to be a highly credible witness and I can find no reason to discount his evidence in this regard.

In accepting the male Agent for the Landlord's testimony regarding the blockage, I was heavily influenced by the absence of evidence that refutes his testimony. I find the Tenant's testimony that she did not observe him remove an apple is of little evidentiary value, as it is highly possible that the apple was removed without her knowledge.

In determining the issue of the blockage I was also influenced by the absence of evidence to support the Tenant's speculation that a piece of the toilet broke off, as a result of shifting, which then plugged the toilet. Given my experience, I find the version of events provided by the male Agent for the Landlord to be significantly more probable than the speculations of the Tenant.

As I have determined, on the balance of probabilities, that the blockage of December of 2006 was caused the actions of the Tenant, I find that the Tenant is obligated to pay for the costs of that repair, pursuant to section 32(3) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

I authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the cost of filing this Application for Dispute Resolution.

The Landlord retains the right to file an Application for Dispute Resolution seeking a monetary Order for the costs of any repairs the Tenant is obligated to make.

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 09, 2015

Residential Tenancy Branch

