



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the Landlord to comply – Section 62;
2. An Order for emergency and other repairs – Section 32;
3. An Order for a rent reduction – Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord complying with the tenancy agreement or Act?

Are emergency or other repairs required to be done by the Landlord?

Has the Tenant suffered a reduction in the value paid for the unit?

Background and Evidence

The tenancy started on July 15, 2013 with monthly rent of \$800.00 payable on the first day of each month. The rent increased to \$817.25 as of November 1, 2014 and another rent increase to \$837.00 takes effect on November 1, 2015.

The Tenant states that the Landlord was informed over a year ago that the fridge was making continual and loud noises. The Tenant states that that Landlord attended but

was not able to fix the noise. The Tenant states that despite repeated requests for the fridge to be repaired the Landlord has failed to remedy the problem. The Landlord states that that the fridge was purchased new in 2012 and that when he investigated it a year ago he felt the noise was normal. The Landlord agrees to have a qualified repair person inspect the fridge and will make any necessary repairs no later than August 19, 2015.

The Tenant states that the Landlord was informed over a year ago that the air conditioner did not work properly. The Tenant states that the Landlord did nothing. The Tenant states that the Landlord was informed on June 24, 2015 that the air conditioner stopped. The Tenant states that she informed the Landlord of her urgent need for the air conditioner due to a medical condition and due to her surgical convalescence at the time. The Tenant provided a medical note. The Tenant states that the temperatures were high and near 40 Celsius at the time. The Tenant states that the Landlord did nothing until August 3, 2015 when a used window conditioner was delivered to the Tenant. The Tenant states that she had to install the conditioner herself but that it works. The Tenant states that the Landlord has not removed the old air conditioner.

The Landlord states that it took time to find an air conditioner online. The Landlord states that the unit he purchased was used and that he thought it was a portable unit to make it easier for the Tenant. The Landlord states that the Tenant herself contributed to the ultimate demise of the conditioner as the Tenant did not clean the filter on a regular basis. The Landlord does not know if the Tenant was given any instructions for the cleaning of the filter but states that it is common knowledge much like cleaning a dryer filter. The Landlord states that while he could have purchased a new conditioner from a store earlier, he was trying to find a cost effective portable conditioner. The Landlord agrees to have the old conditioner removed by August 14, 2015. The Tenant states that when the Landlord failed to act after the Tenant first told the Landlord that the air conditioner was not working properly the Tenant took it upon herself to research air conditioners and did follow instructions to clean and maintain the unit until it ceased to work. The Tenant states that when she first cleaned the filter over a year ago, the

filter was filthy and did not appear to ever have been cleaned. The Tenant states that she cleaned the filter every month thereafter but that this did not improve the working of the conditioner. The Tenant states that no instructions for the care of the conditioner was ever provided to her and that it is not common knowledge that its filters had to be regularly cleaned.

The Tenant states that the shower diverter is damaged and that water leaks out so much that the water pressure is reduced. The Tenant states that she informed the Landlord on April 20, 2015 and on April 27, 2015 the Landlord told the Tenant he would not make any repairs. The Tenant states that the Landlord did nothing until now and that a repair person is expected for the shower on August 14, 2015. The Tenant does not believe the person is a plumber. The Landlord states that the Tenant failed to follow the Landlord's instructions to the Tenant for repairing the diverter by spraying it with WD 40. The Landlord states that if repairs are required to the shower they will be made promptly. The Landlord states that if any loss occurred to the Tenant it would only have been in relation to reduced water pressure.

The Tenant states that the Landlord satisfactorily took care of the wasp problem. The Tenant states that she only has one phone number for the Landlord and that she requires an emergency contact that lives closer to the unit as the Landlord lives in another city. The Tenant states that she had not had any problems contacting the Landlord by phone.

Analysis

Section 65 of the Act provides that if a landlord has been found not to have complied with the tenancy agreement, an order may be made to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. It is undisputed that the unit was rented with an operational air conditioner, albeit not in the best operation. It is also undisputed that the Landlord was informed of both the loss of the air conditioner and the urgent nature for its requirement. I do not find the Landlord's reason for a one month delay in providing a working air conditioner to be reasonable in

the circumstances. However the Tenant has only sought a rent reduction for the loss of the air conditioner. As there is no dispute that the Tenant did not have an operational conditioner for approximately a month, considering the amount of rent paid and considering the equivalent loss to the Tenant, I find that the Tenant has substantiated a **\$100.00** retroactive rent reduction. I accept the Tenant's believable evidence that the Tenant did maintain the air conditioner until it stopped working. As the Landlord has agreed to remove the old air conditioner, I decline to make an order of compliance. If however the Landlord fails to act as agreed, I give the Tenant leave to reapply for compensation.

As there is no evidence that the Tenant lost any use of the fridge, I find that the Tenant is not entitled to a rent reduction for a reduction in the value of the tenancy. Should the Landlord fail to inspect and may any necessary repairs, the Tenant has leave to reapply for compensation.

Although I can accept that the Tenant experienced reduced water pressure for a period of time and there is no evidence of any loss of use of the shower, I find that the Tenant has not substantiated a rent reduction. Should the Landlord failed to inspect and make any necessary repairs as agreed, the Tenant I give the Tenant leave to reapply for compensation.

Section 33 of the Act provides that the landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. As the Tenant has a contact number to the Landlord for emergency calls and as there is no evidence that the Landlord has not responded to the Tenant's calls, I find that the Tenant has failed to established that the Landlord is not in compliance with the Act or tenancy agreement and I dismiss the claim for an order of compliance.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$150.00** and the Tenant may deduct this amount from future rent payable.

Conclusion

The Tenant may deduct \$150.00 from future rent payable.

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: August 18, 2015

Residential Tenancy Branch

