



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, O, FF

Introduction

The tenant applies for compensation for the inconvenience caused by repeated landlord entry notices to show the home to prospective purchasers and alleges the landlord has failed to conduct necessary repairs to a vacuum system and a dishwasher. He also seeks an order that the landlord make repairs and comply with the law and the tenancy agreement.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

Background and Evidence

The rental unit is composed of the three bedroom "plus den" upper portion of a house. The landlord, the owner, lives in a basement suite below.

The tenancy started in September 2014. It is scheduled to end August 31, 2015 and the tenants will be moving out.

The monthly rent is \$2100.00. The landlord holds a \$1050.00 security deposit and a \$1050.00 pet damage deposit.

The tenant testifies that the move in condition report indicated various existing damage to the premises and that the landlord has failed to repair that damage.

He says that the central vacuum system ceased to work and that the landlord took a month to have it repaired after being given notice of it.

The tenant says that the dishwasher had been malfunctioning for four months; making grinding noises and leaving a film on the dishes. The landlord was notified and suggested various remedies such as trying different detergent products. Ultimately, it started to leak, the landlord was notified about the leak and the machine repaired August 6th.

The tenant says that on June 14, 2015 the landlord delivered 15 Notices to enter the premises for 15 consecutive days for the purpose of showing the premises to prospective purchasers. He says that the landlord (or her realtor) attended on only a few of those days. The Notices and the entries caused the tenant and his wife inconvenience. On one occasion he was in the shower..

The landlord denies any obligation to repair the items noted as damaged in the move in report.

She says that she took reasonable steps to repair the vacuum system and that because the dishwasher was an inexpensive she thought the noise was normal operating noise. The film residue the tenant reported she considered to be an inconvenience.

As it turns out, the dishwasher drain was plugged by sludge and a couple of plastic pieces that had broken away from the upper dish rack in the unit.

The landlord says that the tenant's wife was quite accommodating with the sale viewings but that the tenant was not and required a formal Notice of Entry for each attendance.

Analysis

Unless there is some agreement about it, a landlord is not responsible to repair incidental damage like wall scratches, picture nail holes and similar marks that have been noted on a move in condition report. The purpose of the report is to require the parties to record what damage has not occurred during a particular tenancy.

The tenant's claim for repair of that damage is dismissed.

The evidence shows that upon being notified of the vacuum problem, the landlord quickly wrote to suggest the tenant empty the canister and, as she was going to be away, to contact a named person if the problem continued. The tenant failed to respond. The problem was fixed about a month later. I find that any delay in repairing

the vacuum and any resulting inconvenience the tenant might have suffered was not the fault of the landlord.

I dismiss this item of the claim.

I find that the dishwasher was in need of repair because of a blocked drain. I find that the malfunctioning dishwasher caused the tenant moderate inconvenience in having to re-run dishes or otherwise clean them again. It cannot be determined on this evidence whether the blockage was the fault of the landlord or as a result of use by the tenant. The initial onus is on the one who alleges it, the tenant in this case, and he has not satisfied that onus.

This item of the tenant's claim is dismissed.

A tenancy agreement provides a tenant with the right to exclusive possession of the premises subject only to a landlord's limited statutory right to enter. A tenant is entitled to require formal notice for the landlord to enter and a landlord has no justifiable ground to complain about a tenant demanding this entitlement.

At the same time, a tenant cannot complain about a landlord exercising her right to enter for a reasonable purpose related to the tenancy; for inspections or minor repair work, for example. Normally, a tenant would have to accommodate it.

In this case however, the landlord was not entering for purposes related to the tenancy. She was entering for the purpose of showing the home to prospective purchasers. She is lawfully entitled to do so but as it is for a purpose not related to the tenancy, she cannot expect her tenant to simply suffer the intrusion or in the case where no one actually enters, the expected intrusion.

In all the circumstances of this case, having regard to the number of entry notices given and the single incident, the shower incident, where the tenant was shown to have been disturbed, I award the tenant \$250.00 as damages for the inconvenience caused by the landlord's repeated Notices to enter.

During the hearing the tenant raised a complaint about the sprinkler system at the premises. That claim was not fairly raised in his application. In any event, the evidence presented about a problem with the sprinkler system was insufficient to show that the landlord was responsible for any problem or that the tenant suffered any damage as a result.

Conclusion

The tenant is entitled to a monetary award against the landlord in the amount of \$250.00 plus recovery of the \$50.00 filing fee. There will be a monetary order against the landlord for the total of \$300.00

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 19, 2015

Residential Tenancy Branch

