



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FF, MNDC, RR

This hearing dealt with an application by the tenant seeking an order to have the landlord make emergency repairs for health or safety reasons, an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The relationship between these parties is an acrimonious one. Both parties were cautioned numerous times about their behavior during the hearing. The parties often referred to other hearings that are pending involving this tenancy. It was explained to both parties in great detail several times that this decision would only address the application that is before me. Both parties indicated that they understood. The hearing proceeded and completed on this basis.

Issue to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on October 1, 2010. The tenants were obligated to pay \$1740.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$838.00 security deposit and a \$838.00 pet deposit. The tenant stated that she has been without the use of the shower in her suite since July 25, 2015. The tenant stated that despite notifying the landlord of this problem on numerous occasions, the landlord has done nothing. The tenant stated that she is left with a bathroom that has a plywood floor and a non-functioning shower.

The tenant stated that the issue with the bathroom started in February 2014 when the toilet required replacing. The tenant stated that due to a poorly installed toilet that kept leaking, the bathroom floor has rotted out with mold and feces. The tenant had a plumber inspect the bathroom as well as a remediation expert on mold and asbestos. The tenant stated that the plumber gave his opinion that the floor needed to be replaced and that the shower be repaired. The remediation expert found that the lino floor was positive for asbestos. The tenant stated that she wants to have the shower repaired, the flooring redone; removing any and all traces of asbestos, reimbursed her costs for having the two experts inspect and assess the bathroom and is seeking compensation for the loss of use of the shower for 77 days at 33.70 per day = \$2594.55.

The tenant is applying for the following:

1.	Plumbing Inspector	\$366.45
2.	Lab tests for asbestos	\$189.00
3.	Loss of Use of shower	\$2594.55
4.	Filing Fee	\$50.00
5.		
6.		
	Total	\$3200.00

The landlord disputes the tenants claim in its entirety. The landlord stated that they have fixed the shower and repaired the toilet. The landlord stated that the tenant has not suffered a loss of use as the shower is still functioning and that she has observed the shower stall being wet which she submits; the tenant has been using the shower. The landlord stated that the floor has not been replaced as the parties had agreed to end the tenancy and thought it would be easier to do when the tenant moved out.

The landlord stated that the agreement to end tenancy fell apart and that she issued a notice to end the tenancy. The landlord stated that she feels the tenant is in her home illegally. The landlord stated that the tenant is a hoarder and has "absolutely destroyed my home". The landlord stated that the tenant is the cause of all the mold and water leaks which has led to all of these problems. The landlord wants the tenant to move out so "I can restore my home to the way it was".

The landlord stated that the only reason the tenant has filed an application is because she has issued a notice to end tenancy and that the tenant is angry.

Analysis

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. After reviewing the documentation and testimony, I find that the tenant has provided sufficient evidence that the bathroom is in need of repairs. However, I do not find that they fall under “emergency” repairs. The tenant provided receipts to show that she had paid for a plumber to inspect the bathroom as well as a remediation expert. I find that the tenant is entitled to the recovery of the costs in the amount of \$555.45.

I hereby order that the landlord install a proper floor in the bathroom and that any and all mold and asbestos issues be addressed prior to installing the floor. I also order that the landlord address any plumbing issues required in the bathroom; whether it is the shower, the vanity, the toilet or the tub. That work is to be conducted and completed by no later than December 31, 2015.

The tenant has requested a loss of use of \$2594.55. The landlord provided disputing evidence that the tenant has been using the shower throughout and that she has not suffered a loss. The landlord was clear, concise and compelling on this issue and I accept the landlords’ testimony. The tenant was at times contradictory in her testimony in regards to the loss of use and I give her testimony limited weight. Although the shower is not aesthetically pleasing to look at, it is functional. The tenant is not entitled to the compensation as sought, but a nominal one.

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I find that the tenant is entitled to a nominal award of \$200.00 as compensation.

The tenant is also entitled to the \$50.00 filing fee.

Conclusion

In summary, the tenant has been successful in the following claims:

Plumbing Inspector	\$366.45
Remediation Inspector	\$ 189.00
Nominal Compensation	\$200.00
Filing Fee	\$50.00
Total:	\$805.45

I grant the tenant an order under section 67 for the balance due of \$805.45. This order may be filed in the Small Claims Court and enforced 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: November 9, 2015

Residential Tenancy Branch

