



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 17, 2015. The landlord also confirmed that he received copies of the tenant's written evidence well in advance of this hearing, although he said that he had not received the tenant's photographs until Friday, December 11, 2015. Although the tenant's photographs should have been provided to the landlord well in advance of this hearing, I am satisfied that the landlord had an opportunity to review these photographs and written evidence in sufficient time to be in a position to provide sworn testimony in response to the tenant's claim. I am satisfied that the above documents have been served to the landlord in accordance with sections 88, 89 and 90 of the *Act*, in sufficient time to enable the landlord to know the case against him and to respond to the tenant's allegations at this hearing.

Issues(s) to be Decided

Should an order be issued to the landlord to undertake repairs or emergency repairs to the rental unit? Is the tenant entitled to reduce her monthly rent for a loss in the value of this tenancy due to services or facilities not being provided to the tenant, which should have been included in her monthly rent?

Background and Evidence

The parties agreed that no written Residential Tenancy Agreement was created by the landlord for this tenancy for a strata unit in a 162-unit strata building. Although a landlord is required to create a written Residential Tenancy Agreement for every residential tenancy, I am satisfied that an oral agreement was entered into between the parties for a tenancy calling for the tenant's payment of \$1,100.00 each month, payable in advance on the first of each month. The landlord continues to hold the tenant's \$550.00 security deposit paid on or about October 1, 2013. The landlord said that the tenant moved into the rental unit on or about September 15, 2013, approximately two weeks earlier than she was supposed to take occupancy of the rental unit. The tenant said that the landlord's agent allowed her to move into the rental unit before the scheduled October 1, 2013 start of this tenancy, and did not require her to pay any rent for September 2013.

The tenant supplied sworn testimony and some written evidence in support of her assertion that the water supply to her rental unit was subject to intermittent periods of rusty and slimy water. She maintained that the first episode of these ongoing water problems occurred about a year after she commenced her tenancy. In her December 9, 2015 letter she entered into written evidence, she described the sequence of events as follows:

...I first noticed this about a year ago when hot rusty water came out of both the bathtub tap and also the sink in the bathroom tap. This occurrence was only the one time, and I did not report it to the management, as I thought to myself, it is an old building and I guess things like that happen. However, I began boiling my drinking water at this time. This did not reoccur until 6 months later, when the same dirty, rusty water came out of my bathtub tap. It occurred randomly and not being prepared for this, I was unable to catch it on film, as I was advised to do at the Arbitration board some months later...

When she has raised these concerns with the landlord and the strata building manager and followed directions to run water for some time, there was some relief, but this relief only lasted for a few weeks. She did not dispute the landlord's claim that plumbers were called into the building on several occasions, but no lasting solution has been identified. She described the ongoing problem in the following terms:

...this has been most unpredictable and random, so if the dirty dumps did not occur when I first turned on the water then it was difficult to document, as I still needed to shower and thought the water was being filtered by the shower...

She alleged that on the most recent occasion when the plumber attended the building, he said that there was a similar problem on the 18th floor of this building. She stated

that she has taken out a membership at the local gym, as she cannot bathe in her bathtub in her rental unit. She prefers to bathe as opposed to shower. Although she produced no receipts, the landlord did not dispute her claim that she has been bathing at the local gym and has been paying for transportation or parking several times a week in order to bathe at that facility. She applied for a retroactive monthly rent reduction of \$70.00 for the loss in the value of her tenancy due to the problems she has encountered in having a consistent and clean source of hot water in her rental unit.

The landlord maintained that he has done everything possible to check on the water quality of the rental unit. A plumber inspected the rental unit and the building on September 28 and November 9, 2015. On both occasions, the plumber reported no presence of water problems at the building. During the November 9, inspection, he also inspected adjacent suites, which were also considered working properly. He said that the building manager for the strata property has also been involved in this process, and reports that no one else in this 162-unit building is reporting the types of water quality problems described by the tenant. He said that he is uncertain as to what else can be done. He said that he views the tenant's claim as an "opportunistic excuse" to get free rent from the landlord.

Although the landlord said that the plumber wrote notes about his inspections and the landlord has receipts from these visits, the landlord did not submit any written evidence to support his position. The landlord said that the plumber could not participate in this hearing because of a death in the family. He explained that the strata building manager chose not to participate in this hearing.

Analysis

As set out below, section 32 of the *Act* establishes the following obligations on a landlord to repair and maintain a rental unit:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” Section 65 of the *Act* reads in part as follows:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that there has been a loss in the value of her tenancy caused by the landlord's failure to provide services or facilities that she would reasonably have been expected to receive as part of her tenancy agreement.

In this case, there is a scarcity of independent evidence supplied by the parties. While the tenant has provided some photographs and there is some email evidence that the tenant has been raising concerns with the landlord about the water quality, the tenant produced no independent witnesses, nor did she provide any written statements from anyone who could confirm her claims. She provided no written receipts for any expenses incurred as a result of the landlord's alleged failure to provide her with the quality of water she was anticipating when she commenced her tenancy. By the same token, the landlord did not provide anything from the plumber or the strata property building manager to support his claim that he had done everything he could to inspect

the premises and rectify a problem had they been able to confirm the tenant's claim regarding the quality of the water. He produced no records of invoices, receipts or inspections completed by the plumber in an attempt to ascertain the source of the problem identified by the tenant.

Under these circumstances, I have little to rely upon but the sworn testimony of the parties and the very limited written and photographic evidence of the tenant. While I realize the landlord has tried to identify the source of the water quality problem for this rental unit, in accordance with section 33 of the *Act*, I order the landlord to retain a plumber an additional time to inspect the premises to assess the tenant's complaints. In this regard, I order the tenant to contact the landlord and the strata property building manager as soon as possible after she encounters another episode of water quality problems. I order the landlord to ensure that a plumber is retained to visit the rental unit and inspect the premises to assess the tenant's complaints about water quality as soon as reasonably possible after the tenant reports the next episode of water quality problems. I order the landlord to provide a copy of the plumber's report to the tenant within a week of the inspection and to undertake any repairs recommended by the plumber to correct any problems of water quality that the plumber discovers on that inspection.

I find on a balance of probabilities, it more likely than not that there have been some intermittent problems with water quality in the tenant's rental unit, which has led to a loss in the value of this tenancy. Pursuant to section 62(1) and 62(3), and paragraphs (65(1)(c) and (f) of the *Act*, I find that there has been a reduction in the value of this tenancy as a result of the intermittent water quality problems reported by the tenant. However, the timing and frequency of these episodes is somewhat uncertain and inadequately documented by the tenant, as is the extent to which this is a problem that truly reduces the value of this tenancy.

Arriving at an objective figure for the amount of the loss in value is somewhat difficult given the intermittent nature of the problem reported by the tenant and her failure to provide much in the way of corroborating evidence other than her claim that it costs her \$70.00 to use the bath facilities at the local gym. While I accept that there has been some loss in value of the tenancy, I find that the amount of this loss is limited to a nominal monthly amount of \$50.00, designed to recognize that there has been some unquantifiable loss in the value of this tenancy due to the water quality problems. As the timing of the problems reported by the tenant have been so intermittent, I allow the tenant a retroactive monthly reduction of \$50.00 rent as of October 1, 2015, until some type of repairs are undertaken by the landlord to correct whatever problem may be causing the water quality issues in this rental unit. This results in a retroactive monetary

award of \$150.00 in the tenant's favour. While there may have been some occasional problems with water quality prior to that time, I find that the tenant has not demonstrated that this has been an ongoing and continuous problem to the extent that it reduced the value of her tenancy prior to October 1, 2015.

In the event that corrective repairs are deemed necessary by the plumber and undertaken, I order that this ongoing monthly rent reduction of \$50.00 will be eliminated in the month following the completion of these repairs, at which time the monthly rent will revert to the amount legally set for this tenancy, currently \$1,100.00.

Conclusion

I order the tenant to contact the landlord and the strata property building manager as soon as possible after she encounters another episode of water quality problems. I order the landlord to ensure that a plumber is retained to visit the rental unit and inspect the premises to assess the tenant's complaints about water quality as soon as reasonably possible after the tenant reports the next episode of water quality problems. I order the landlord to provide a copy of the plumber's report to the tenant within a week of the inspection and to undertake any repairs recommended by the plumber to correct any problems of water quality that the plumber discovers on that inspection.

I order that the monthly rent for this tenancy be reduced to \$1,050.00, until such time as repairs are undertaken by the landlord to correct whatever problem may be causing the water quality issues in this rental unit. The monthly rent will revert to the amount legally set for this tenancy in accordance with the *Act* (currently \$1,100.00), in the month following the completion of repairs to correct the water quality problems for this tenancy.

I issue a retroactive monetary award of \$150.00, to be implemented by deducting this amount from a future monthly rent payment by the tenant. I order the tenant to advise the landlord of the month the tenant chooses to deduct rent by \$150.00 to implement this monetary award.

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: December 16, 2015

Residential Tenancy Branch

