



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LAT, LRE, MNDC, MNR, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss including destruction of his personal property under the *Act*, regulation or tenancy agreement pursuant to section 67; an order to the landlord to make repairs to the rental unit pursuant to section 33; an order to allow the tenant to reduce rent for facilities agreed upon but not provided, pursuant to section 65. The tenant amended his original application and did not request cancellation of the notice to end tenancy in the amended copy of his application. He withdrew that portion of his application.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's multiple evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow him to reduce his rent for repairs?

Background and Evidence

This month to month tenancy began on July 1, 2010 with a current rental amount of \$604.75. The landlord testified that he continues to hold a security deposit in the amount of \$297.50 paid by the tenant at the outset of this tenancy.

The tenant testified that, over the course of the tenancy, he was subjected to a bed bug problem within his residence. As a result of the ongoing treatments and resiliency of the bed bugs in his residence, the landlord eventually removed the carpet in his rental unit, leaving only cement subfloor with nothing placed over of it to cushion its firmness. The tenant testified that walking on his floor can cause pain and he cannot sit or kneel on his floor in its current state: it's just too hard.

The landlord testified that he was forced to remove the tenant's extremely deteriorated carpet from the rental unit. He submitted a letter that was signed by the both parties indicating that he agreed as follows,

I [tenant] in [rental unit] hereby request all carpet and underlay to be removed. I am satisfied with the floor under the carpet and underlay to be painted grey. I will continue to pay my rent of \$604.75 as before...Removal and carpet and underlay and floor painting to take place on 30sept2015 and 1oct2015.

The landlord testified that the tenant tried to gift furniture to new neighbours. Concerned with the ongoing bed bug infestation in the tenant's unit, the landlord threw out the furniture, ensuring that it wouldn't return back into the residential premises. The landlord testified that he has spent several thousand dollars to rid bed bugs from the residential premises and the tenant's rental unit. He testified that the tenant did not maintain the carpet within his unit; did not vacuum or clean it and therefore it made sense to get rid of it and not replace it. He testified that the floors in the unit have been cleaned, painted and sealed.

As well as the seeking an amount for disposal of his furniture, the tenant also claims that he has been harassed by the landlord. The tenant stated that the landlord treats him very poorly, does not respond to his requests for repairs and that he has tried to evict him without grounds on several occasions. The tenant submitted that he should be compensated for a lack of quiet enjoyment of his premises directly because of the landlord's behaviour as well as to receive compensation for items in his home that had to be disposed of because of the bed bug infestation. As well, as the tenant states he is fearful of the landlord, he would like to be compensated to replace the locks on his rental unit door. Finally, the tenant would like to receive the money to complete repairs to the floor in his unit as he submits that it is currently unacceptable flooring for a residential premises. The tenant submitted photographic evidence that shows a cement and tile floor with nothing on top of it. The landlord agreed that this is the current state of the floor in the tenant's rental unit.

The tenant's actual monetary claim totalled \$4190.00 including the following;

Item	Amount
Floor improvement : materials and labour (\$350.00 and \$250.00 respectively)	\$600.00
Harassment	2500.00
Destruction of property - Mattress (\$200.00) - Sofa (\$200.00) - Sofa bed (\$400.00) - Chair (\$150.00) - Blankets (\$25.00)	1025.00
Placing new Locks on rental unit	65.00

Total Monetary Order Sought by Tenant	\$4190.00
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The tenant also sought orders with respect to the following;

- Emergency repairs to electrical fire hazard above stove
- Remove/de-commission health hazard derelict septic tank;
- Suspend or set conditions for the landlord's right to enter the rental unit.

The landlord submits that the tenant agreed to the new condition of the floor within the rental unit and that this overrides any provision for carpet in the original tenancy agreement. Furthermore, the landlord testified that he cannot risk another infestation if the tenant does not clean his carpet. As well, the landlord stated he is not responsible for the tenant's property and denies any harassment. He stated that he is just trying to resolve matters with the tenant with respect to pest control and other ongoing issues.

Analysis

Section 32 of the *Act* provides the obligations of both parties to repair and maintain a residential property. The landlord must ensure that the property complies with health, safety and housing standards according to all applicable legislation, considering the specific residence's age, character and location. The tenant must maintain reasonable health, cleanliness and sanitary standards within the tenant's rental unit. The tenant must repair any damage created by his neglect or actions but not reasonable wear and tear.

While the landlord claims that the tenant keeps the rental unit and the carpet in disrepair, the landlord did not present sufficient evidence to support this position. Particularly, the landlord did not present sufficient evidence that the tenant keeps the rental unit in unsanitary conditions. It should also be noted that section 38 of the *Act* allows a landlord to claim all or a portion of a tenant's security deposit as well as additional damages proven to be the responsibility of the tenant at the end of the tenancy. The landlord testified that he was being practical in not providing a new carpet to the tenant. However, he will be in a position to address any damage or loss he incurs at the end of the tenancy. I note that landlord has been premature in allowing the tenant to live in substandard conditions that would be addressed at the end of tenancy...

Furthermore, this particular tenancy is based on an agreement that indicates the landlord will provide carpet as a part of this tenancy. "Carpet" is clearly marked as a part of the tenancy to be provided to the tenant. Even if the tenant "opted out" of this provision or released the landlord from this provision by signing an agreement to allow his carpets to be pulled out, that secondary agreement indicated that new underlay would be provided. I find that it is unreasonable to expect that the tenant, in this position, would agree to concrete painted floors with no padding at all. I find that the tenant is not entitled to be paid to repair these floors himself. However, I do find that the tenant is entitled to an order requiring the landlord to add carpet to the floors in all

the circumstances. I find the tenant is entitled to a rent reduction from the date the carpets were removed until they are ultimately installed. The carpets were removed on September 30, 2015 and the tenant continues to reside in the rental unit as of the date of this hearing. I find that he is entitled to a rent reduction of \$60.00 per month (approximately 10%) for the months of October 2015, November 2015, December 2015, January 2015 and February 2015 for a total of \$300.00. I find that the tenant is entitled to continue to reduce his rent until the carpet is replaced. For the month of March, the tenant will be entitled to reduce his rent by \$70.00 per month; for the month of April, the tenant will be entitled to reduce his rent by \$80.00 per month; and he may continue to reduce his rent by a further \$10.00 each month until and only until the carpet is replaced.

With regard to the tenant's claim of compensation for his furniture, section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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.

The tenant was not able to provide sufficient documentary evidence to show when his furniture had been purchased or its cost in order to begin to determine what amount of loss, if any the tenant incurred. The tenant was not able to provide sufficient documentary evidence to suggest that the landlord had not taken steps to address the bed bug problem thereby making the landlord responsible for any loss of furniture. Just as the tenant cannot be held responsible for the need to remove a bedbug ridden carpet from his unit when there was no evidence that the infestation stemmed from his actions, the landlord cannot be held responsible for items that needed to be disposed of in these particular circumstance (mattress, chair, etc.).

Furthermore, the tenant testified that he gave his sofa away. Therefore, any loss of this furniture item is not a loss as a result of actions by the landlord. I do not find that the tenant is entitled to a monetary order relating to loss of personal belongings. I also do not find that the tenant has provided any sufficient information or evidence with respect to his claim of "harassment" or lack of quiet enjoyment. The tenant and the landlord appear to have regular disputes and are best to communicate in writing in the future whenever possible. However, I do not find that the tenant has proven an adverse effect on his quiet use of residence as a result of actions by the landlord at this time.

I find that the tenant has not provided sufficient evidence, in his written materials or in his testimony (which mainly focussed on the issue of the carpet) to prove that he requires an order for emergency repairs to electrical fire hazard above stove; remove/de-commission health hazard derelict septic tank; or suspend or set conditions for the landlord's right to enter the rental unit.

Conclusion

I grant the tenant a monetary order in the amount of \$300.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I grant the tenant an order requiring the landlord to replace the carpet within the rental unit. I allow the tenant to continue to reduce his rent in the amounts set out above, increasing \$10.00 per month until the carpet is repaired.

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: February 11, 2016

Residential Tenancy Branch

