



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
Prospero International Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, 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. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to comply - Section 62;
3. An Order for emergency and other repairs - Section 32;
4. An Order for a rent reduction - Section 65; and
5. 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 out of compliance with the Act?

Has the Landlord breached the Act?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to compensation?

Are repairs to the unit required?

Background and Evidence

The tenancy started on October 1, 2015. Rent of \$1,550.00 is payable monthly.

The Tenant states that for the first month of the tenancy the mailbox could not be accessed as the Tenant could not make the key fit. The Tenant states that although the Landlord was informed immediately it took the Landlord a month to change her key. The Tenant states that she was only able to manage to get into her mail box during that month on a few occasions but that no losses were incurred by the Tenant in obtaining her mail periodically. The Tenant claims \$50.00. The Landlord states that as soon as the Tenant informed them of problems a new key was obtained and that the Tenant failed to come to the office to pick that key up for about 3 weeks. The Tenant states that the key was only sitting in the office for 1 or 2 days.

The Tenant states that the ceiling has been leaking periodically since the onset of the tenancy. The Tenant states that the leak was not noticed at the walk through inspection but 2 days after the tenancy started the leak appeared. The Tenant states that a small hole also appeared and has since grown larger. The Tenant states that she immediately informed the Landlord but that nothing has been done. The Tenant states that the leak occurs only once in a while. The Tenant states that she has to take continuous precautions for the leak onto her carpet and furnishings and has been disturbed by not knowing when the leak may occur. The Tenant states that the Landlord was informed after the first few leak occurrences and given the Landlord's inaction the Tenant stopped informing the Landlord of the leak occurrences. The Tenant claims \$450.00 for the leak over three months at \$150.00 per month.

The Landlord states that while he knew about the initial leak, he was unaware of the hole and any leaks since December 2015 when the Landlord determined that the leak was likely caused by rain ingress in the unit above. The Landlord states that since they did not hear anything they thought the matter was resolved. The Landlord agrees that the repairs to the leak are an urgent matter and states that repairs will be made immediately and no later than March 4, 2016. The Tenant states that the Landlord was in the unit to see the crack and the leak in December 2015 and had to have known of the hole as the Landlord felt the area.

The Tenant states that from the onset of the tenancy the breaker would blow when the Tenant used, among other things, the vacuum or hair dryer. The Tenant states that the matter was reported to the Landlord but nothing was done until after the application was made in January 2016. The Tenant states that the electrical problems have since been inspected and repaired but that she no longer has use of an outlet in the bathroom and to use an extension cord could cause her elderly father to trip. The Tenant claims \$600.00 for three months of electrical problems.

The Landlord states that there should not have been an outlet in the bathroom but that a previous tenant installed it. The Landlord states that it took some time to finally resolve the problem as the Landlord was trying to accommodate the Tenant's desire to have an outlet in the bathroom. The Landlord states that the outlet ultimately had to be removed.

The Tenant states that ants were found in her bed in November 2015. The Tenant states that she could not report these ants until sometime in December 2015 as she was busy with work and family requirements. The Tenant states that it was nothing was done until January 22, 2016. The Tenant claims \$450.00 for the presence of ants over a three month period at \$150.00 per month.

The Landlord does not dispute that "fire ants" were in the unit. The Landlord states that pest control was called in December and after attending the unit on a couple of occasions the ants were fully eradicated in January 2016. The Landlord states that the date on the invoice is not the date the work was done. The Landlord states that even if it took some time the amount being claimed is excessive. The Tenant states that the ants were not reported sooner because

the Landlord's agent was angry and defensive when told about the problem by the Tenant's sister and that the Tenant felt that reporting problems was useless as the Landlord would fail to act.

The Tenant states that access to and use of the recreation facilities has not been provided to the Tenant as the facilities have been under construction since the onset of the tenancy. The Tenant states that no discussions were held with the Landlord at the time of entering into the tenancy agreement about the use of the facilities. The Tenant claims \$600.00 for loss of use of the facilities. The Landlord states that the Tenant knew at the outset that the recreational facilities were under construction and that she would not have access to them until after completion of the construction. The Landlord states that the recreational facilities are not included in the written tenancy agreement. The Landlord states that once the facilities are completed the Tenant will have access for no additional rent.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. While I accept that the Tenant was provided with access to her mail box under the tenancy agreement and that over a period of one month the Tenant's access was impeded, the Tenant provided no evidence of loss other than some minor inconvenience. As a result I find that the Tenant has not established its claim for compensation in relation to the mail box and I dismiss this claim. Given the undisputed evidence that the facilities were under construction at the time the tenancy agreement was entered into and considering that there is no provision for access to these facilities prior to the construction completion, I find that the Tenant has failed to substantiate that the Landlord breached the tenancy agreement and I dismiss the claim for loss of use of facilities while they are under construction.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Given the Landlord's evidence I find that the Landlord knew of the leak at the onset of the tenancy in October and checked the leak area again in December 2015. Although the Tenant did not report any further occurrences, there is no evidence that a qualified person was called in to, minimally, inspect the leak. I also note that despite being informed of the size of the leak and hole in the Tenant's evidence package the Landlord, by its own admission, did nothing. This evidence compels me to find that the Tenant has substantiated that the Landlord failed to act to repair the leak in October 2015 and that further damage was caused by the Landlord's failure to make such repairs. Accepting that the recurrent and sporadic leak would reasonably cause a significant disturbance to the Tenant's enjoyment of the unit I find that the Tenant has substantiated compensation claimed of **\$450.00**. Accepting the Landlord's agreement to repair this leak immediately, I dismiss the Tenant's claim for a rent reduction with leave to reapply should the Landlord fail to repair the leak as agreed.

Although I can accept that it may have taken a bit of time to determine electrical problems I find that three months are in excess of any reasonable resolution and find therefore that the Tenant has substantiated that the Landlord failed to act within a reasonable time to correct the problem. However the Tenant's evidence only substantiates that the Tenant suffered an inconvenience for short periods of time and I find that this does not substantiate the amount of loss being claimed. I find therefore that the Tenant is only entitled to a nominal sum of **\$50.00** for the electrical inconveniences over 3 months. Accepting that the Tenant no longer has an electrical outlet in the bathroom but considering that the inconvenience could be overcome with an extension cord, I dismiss the Tenant's claim for any rent reduction.

Based on the undisputed evidence, I find that the Landlord was aware of the presence of ants in December 2105. Given the lack of supporting documentation of treatment dates for the pest company and noting the January 22, 2016 date on the pest company invoice I accept the Tenant's evidence that nothing was done until January 22, 2016. Given that at least a month passed before the ants were eradicated I find that the Tenant has substantiated that the Landlord failed to act reasonably to provide suitable occupation to the Tenant. I find that the Tenant is therefore entitled to the compensation claimed for one month in the amount of **\$150.00**.

As the Tenant's application has had merit I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$700.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$700.00**. If necessary, 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: March 04, 2016

Residential Tenancy Branch

