



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Neighbourhood Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, ERP, RP, RR

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 emergency and other repairs - Section 32; and
3. An Order for a rent reduction - Section 65.

At the onset of the hearing the Tenant withdrew the claim for repairs and a rent reduction as the repairs have been made. The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the Landlord fail to make required repairs?

Has the Tenant suffered the losses claimed?

Background and Evidence

The tenancy started on July 1, 2015. Rent of \$487.00 is payable monthly.

The Tenant states that within a couple weeks after the tenancy the unit started to smell badly from second hand smoke. The Tenant states that the Landlord was informed immediately but the smell was not remedied until about March 1, 2016. The Tenant states that while he was able to keep the door and windows open in the summer months, the colder months made the problem worse as heat to the unit would increase the smell and open windows increased the heat costs. The Tenant states that he missed work opportunities from waking up ill after nights sleeping with the windows closed. The Tenant claims \$200.00 per month in compensation for loss of enjoyment of the unit to the date of repairs.

The Landlord states that the unit has been painted prior to this tenancy as the previous tenant smoked in the unit. The Landlord states that the unit was inspected in July 2015 to confirm the smell and the Tenant was given cleaning advice. The Landlord states that in September 2015 the Landlord tried to repair the problem by painting the interior of the cupboards. The Landlord states that this did not resolve the problem so they contracted the handyman to purchase and

install new cupboards. The Landlord states that the custom made cupboards and countertop were not available until November 2015. The Landlord states that the handyman then became ill for two months and that although the materials were on hand, the job could not be completed until the return of the handyman. The Landlord states that the contract with the handyman is complicated, that the Landlord considered that this was "job in progress" and that another person could not take over the job. The Landlord does not believe that the Tenant suffered any hardships.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, freedom from unreasonable disturbance. 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. Given the undisputed evidence that the unit smelled bad enough to warrant a replacement of the cupboards, I find that the Tenant has substantiated a level of smell that would reasonably require repairs as soon as possible and would reasonably disturb the Tenant's quiet enjoyment of the unit until the repairs were completed. While I accept that it could reasonably take a 2 month period of time to determine the source of the problem and order and install new cupboards, I find the overall period of 8 months from start to finish excessive in the circumstances. I do not consider that the Landlord's obligation to its Tenant may be put on hold by a third party's illness. I find therefore that the Tenant has substantiated on a balance of probabilities that the Landlord failed to act as required and that the Tenant suffered a loss as a result of that failure for a total of 6 months.

In considering the amount being claimed by the Tenant, I note that the Tenant's evidence of lost income and illness is not detailed and is unsupported. I do not consider this portion of the claim to be substantiated. As the Tenant did not provide any monetary calculations for its aggregate claim of \$200.00 per month the proportionate remaining loss is unknown. I find therefore that the Tenant has only substantiated a nominal loss of **\$100.00** monthly for 6 months. The Tenant may deduct the total entitlement of **\$600.00** from future rent payable in full satisfaction of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$600.00**. 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 11, 2016

Residential Tenancy Branch

