



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMEX SUNRICH REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, OLC, ERP, RP, PSF, RR, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to have emergency repairs done, for a reduction in rent and for the recovery of the filing fee.

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 tenant had initially applied to be reimbursed for the cost of emergency repairs. On March 09, 2016, the tenant amended her application to include compensation for the loss of use of the deck and for the recovery of the filing fee. The landlord acknowledged that he had received the amendment.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the tenant entitled to a rent reduction?

Background and Evidence

The tenancy started in March 2015. The rental unit is a single family home with a detached garage. A deck wraps around the back and side of the home and provides access from the home to the back yard. The rent is \$5,000.00 per month payable on the first of each month.

The tenant testified that upon viewing the home with intention to rent, she pointed out the poor condition of the deck to the landlord and drew his attention to the fact that the deck needed repairs or replacement.

The manager at that time consulted with the home owners and the parties agreed that the deck would be repaired if the tenant paid a full year's rent up front. The tenant filed a copy of the email from the manager confirming the arrangement.

As per the arrangement, the tenant paid rent for the entire year in two installments of \$15,000.00 and \$45,000.00 within the first six weeks of tenancy. Despite having received this payment, the landlord failed to repair the deck. The tenant made multiple requests to the landlord to carry out the repairs to no avail. As of the date of this hearing, a year later (April 14, 2016), the repair work had not started.

In September 2015, the tenant had an emergency leak and contacted the landlord. The landlord responded immediately and requested the tenant to carry out the repairs and provide him with the invoice. The tenant filed a copy of the note from the landlord authorizing her to carry out repairs up to a cost of \$1,000.00. The tenant incurred a cost of \$748.65 and made a request for reimbursement. The landlord did not respond.

In December 2015, a new manager was hired and the tenant made requests for repairs to the deck and for the reimbursement of costs to fix the faucet. The tenant emailed the receipt to the new manager and filed a copy of the email.

The landlord did not reimburse the tenant for the cost of emergency repairs. On January 26, 2016, the manager visited the rental unit and instructed the tenant to stop all use of the deck. The tenant hired a licensed inspector to inspect the deck and filed a copy of the report. The report, dated March 17, 2016, indicates that the deck is unsafe for use and must be repaired or replaced.

The landlord stated that he had hired a contractor to work on the deck and the contractor informed him that he would do so when the weather permitted. The landlord stated that the repair work is scheduled to start sometime in May 2016. The landlord agreed that he had requested the tenant to refrain from using the deck.

The tenant is claiming a rent reduction of \$2,000.00 for the past 12 months of tenancy for a total of \$24,000.00. The tenant is also claiming the cost of emergency repairs to the faucet in the amount of \$748.65.

However, during the hearing, the tenant informed me that she had already made a deduction off rent as reimbursement of this amount (\$784.65).

The tenant is also claiming the recovery of the filing fee in the amount of \$100.00.

Analysis

Based on the sworn testimony of the both parties, I find that the deck was in need of repairs or replacement and that at the start of the tenancy, the landlord agreed to carry out repairs or replace the deck if the tenant paid rent for 12 months upfront. The tenant complied with the arrangement but the landlord did not.

Section 32 of the *Residential Tenancy Act*, provides the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Based on the testimony of both parties and the documents filed into evidence, I find that the deck that wraps around the back and side of the home is unsafe for use and must be repaired or replaced immediately. Accordingly, I order the landlord to do so.

I further find that since the landlord did not repair the deck, it created an unsafe environment for the tenant and her children. The condition of the deck further deteriorated with time and as of January 26, 2016, the tenant was ordered by the landlord to refrain from all use of the deck for fear of injury to the tenant and her children.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

In this case I find that a breach of contract occurred by the landlord's failure to repair the deck which resulted in a reduction of the value of the tenancy. Therefore I find that the tenant is entitled to a reduction in rent for the months that she occupied the rental unit with an unsafe deck. .

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Based on the testimony of both parties, I find that the tenant had limited use of the deck until January 26, 2016 and after this date she had no use of the deck at all.

Since the garage is located at the end of the back yard and access to the house from the garage was more convenient using the steps up to the deck and accessing the home from the deck, I find that the tenant endured some inconvenience.

In addition access to the back yard from the house was limited to exiting through the front door and walking along the side of the house to the back yard.

Apart from the inconvenience endured by the tenant, I also find that the deck posed a threat to the safety of the tenant and her children.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the negligence on the part of the landlord to repair the deck, after agreeing to and after asking the tenant to pay rent for one year at the start of tenancy, I find it appropriate to award the tenant a rent reduction of \$500.00 per month for the first 11 months of tenancy for a total of \$5,500.00. Since the tenant was not permitted to use the deck at all for the months of February, March and April 2016, I award the tenant \$1,000.00 for each of these months for a total award of \$3,000.00.

Overall I award the tenant compensation in the amount of \$8,500.00 for the inconvenience endured and for the risk to the personal safety of herself and her children due to the unsafe deck.

I also grant the tenant a rent reduction of \$1,000.00 for May 2016. If the repairs are not complete by June 01, 2016, the tenant may make application for a rent reduction for June 2016.

Regarding the tenant's claim to be reimbursed for the cost of emergency repairs, I find that the tenant carried out emergency repairs that were authorized in writing, by the landlord and that despite providing a receipt with a request for payment, the landlord did not reimburse the tenant.

Section 33(5) of the *Residential Tenancy Act* states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for the amount claimed. Section 33(7) states that if a landlord does not reimburse a tenant as required under section 33(5), the tenant may deduct the amount from rent.

In this case when the tenant applied for dispute resolution she applied for reimbursement for the cost of emergency repairs and filed evidence to support her claim by way of an invoice for costs incurred and a copy of an email from the landlord authorizing her to carry out the repairs.

However, after having made application, the tenant deducted this amount from the following month's rent. Therefore since the tenant has already received payment, no further action is warranted.

Overall the tenant has established an entitlement for compensation in the amount of \$8,500.00. Since the tenant has proven her case, I award her the recovery of the filing fee of \$100.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for the amount of \$8,600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I order the landlord to repair or replace the deck immediately.

The tenant may make a rent deduction of \$1,000.00 for May 2016. If the repairs are not completed by June 01, 2016, the tenant may apply for a rent reduction for June 2016.

I grant the tenant a monetary order in the amount of \$8,600.00.

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: April 14, 2016

Residential Tenancy Branch