



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC ERP RP RR PSF OLC O FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss, including repairs under the *Act*, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; an order to the landlord to provide services or facilities required by law pursuant to section 65; an order to the landlord to make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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 evidentiary submissions for this hearing. Tenant KF attended on behalf of both tenants. The landlord stated that he was also seeking compensation at this hearing however the landlord had made no application for dispute resolution and therefore I was unable to consider his submissions regarding his request for compensation from the tenants.

Issue(s) to be Decided

Are the tenants entitled to a monetary order as the result of a rent reduction or any other compensation for damage or loss as a result of this tenancy? Are the tenants entitled to an order requiring the landlord to comply with the *Act* including an order to the landlord to provide services or facilities required by law and/or an order to the landlord to make repairs to the rental unit? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began April 24, 2016 as a 2 year fixed term tenancy. The rental amount of \$3000.00 is payable on the first of each month. The landlord continues to hold a \$1500.00 security deposit paid by the tenants on April 12, 2016. The tenants applied for a monetary award of \$3,750.00 to reflect a loss of quiet enjoyment and a loss of use of facilities within the rental unit.

The tenant KF ("the tenant") testified that he viewed the rental unit before agreeing to rent it. The tenant testified that he made a list of required repairs which he sent to the landlord. The tenant testified that this rental unit had high rent because it was supposed to be an executive suite with high

end finishings and amenities. However the tenant claims that there were a number of issues within the rental unit including;

- Blinds broken, not functional;
- Major electrical problem: sparking and plugs clicking;
- Plumbing issues including inconsistent hot water;
- Mould downstairs;
- Rusted door;
- Dryer broken;
- Flooring stained;
- Deck in disrepair;
- Unlicensed contractors on the premises.

The tenant testified that, recently the landlord has enlisted a manager to assist him in addressing the tenant's concerns. The tenant testified that this manager ("landlord Z") has made great strides in addressing the tenant's concerns within the rental unit. Landlord QS provided sworn testimony (confirmed by the tenant) that a plumber has attended to the tenants' plumbing concerns (including faucet replacement); that the dryer has been fixed; the rusty door has been fixed; and that he will address the broken blinds and the deck in disrepair immediately.

Landlord QS testified that the tenant saw the property inside and out prior to agreeing to rent the rental unit. The landlord submits that the tenant has made regular ongoing requests for repairs to the rental unit. Landlord QS testified that when he receives requests for repairs from the tenant, they are addressed immediately. Landlord QS testified that the tenant complained about the electrical on June 2, 2016 and that when the matter was not addressed the same day, the tenant withheld the June 2016 rent.

The landlord submitted copies of invoices for plumbing work; garage door repair; the cancelled home inspection as well as email correspondence between the tenant and landlord. Manager (landlord Z) testified that whenever the tenant has reported an issue, he has responded. Landlord Z testified that he is trying to arrange a full inspection of the premises with the tenant by a professional so that any issues presenting a safety or health concern can be addressed and other tenant concerns can be discussed. He testified that he has already scheduled one inspection on July 7, 2016 at a cost of \$250.00. Landlord Z testified that the tenant refused to allow the inspection on that date and that the inspector charged the inspection fee despite being unable to inspect the property.

The tenant submitted that he should be given; new carpets; new blinds; information about the permit issued for the back deck work; an air test for mould in the unit; and compensation.

Analysis

In consideration of the tenants' monetary request for repairs that went unaddressed or are, as of the date of this hearing still unaddressed, I refer to Policy Guideline No. 6 regarding the right to "quiet enjoyment" including but not limited to a right to freedom from unreasonable disturbance,

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; ... If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

When considering whether there has been a breach of a tenants' right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to the tenants' enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment however an interference that would give the tenants sufficient cause to end the tenancy would constitute a breach of quiet enjoyment. Policy Guideline No. 6 provides the following,

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Landlord QS referred to an undated, unsigned home inspection report to prove that some of the issues raised by the tenant have been resolved by determining that there is in fact no issue. For example, the report, with very little detail, states that no mold was identified within the unit. I find that the report provided minimal information and lacked detail. I find that this evidence is not sufficient to show that the remaining work identified by the tenant is unnecessary. While I find that the landlord has made efforts to minimize the tenants' disruption or inconvenience, I accept the evidence of both parties that, after the tenancy began in April 2016, the tenant began to make requests regarding repairs to the rental unit. The evidence suggests that some tenant requests were made prior to the tenant's move-in date, after the tenant's walk through the residence. There is documentary evidence of requests for repairs at the end of May 2016 and the first days of June 2016. The landlord began to address the repairs in late June 2016 (June 24, 2016).

I accept the tenant's testimony that the state of the tenants' unit and the effects upon him were beyond nuisance as they had safety implications (electrical, plumbing and stability of exterior surfaces/deck). I accept the tenant's undisputed testimony that he agreed to rent an executive suite at a high rent with high end furnishings and appliances and that there were specific effects on this tenant in that he had non-functioning outlets, faucets and appliances (dryer) as well as a deteriorating deck and flooring. I accept the tenant's testimony that he intends to move his elderly mother into the residence with him and that therefore he is very concerned with the quality of the residence from a health and safety perspective.

The tenant has proven through his own evidence as well as the candid testimony of both the landlord and his manager that he has made repeated requests to the landlord to address the deck, the plumbing, and the electrical as well as to investigate the possibility of mold and make other repairs. I note that the landlord has taken proactive measures in hiring the manager and addressing some of the necessary repairs prior to this hearing.

Under section 32(1) of the *Act*, a landlord is required to provide a residential property in a state of repair that complies with health, safety and housing standards under the law and having regard to the character of the rental unit, make it suitable for occupation by the tenants. Based on the

evidence before me, the tenant met his legislated obligations however any damages or loss incurred by the tenant could have been further mitigated if the tenant had been more accommodating to the landlord in allowing workers and inspectors into his residence.

Based on the testimony of all the parties and the documentary materials, I find the landlord did not meet his obligations under the *Act* regarding all the required repairs to the rental unit in a timely fashion, causing some disruption and loss of quiet enjoyment to the tenant. The tenants must also provide evidence of their loss. Tenant KF's testimony focused on the inconvenience and disruption due to the lack of repairs and the landlord's attempts to repair, investigate.

If a tenant is deprived of the use of all or part of the premises, or when the tenant's right to quiet enjoyment has been impacted, the tenant *may* be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlord did not meet the residential tenancy agreement and their obligations under the *Act* within a reasonable timeline. I find that the tenant has shown *some* loss in the use of his unit and his right to quiet enjoyment warranting a nominal damage award in the amount of \$1000.00 as well as recovery of the filing fee for this application (as he has been successful in the application).

I order that the landlord comply with the *Act* and the residential tenancy agreement.

As the landlord has yet to address all of the repairs but has made representations at this hearing that he will do so, I provide an order that the landlord replace the blinds by August 31, 2016. If the landlord does not replace the blinds within the rental unit by August 31, 2016, the tenants are entitled to reduce their rent on an ongoing basis until the blinds are replaced as set out below.

I order that the landlord provide an inspection and subsequent inspection report regarding the quality of air and the possibility of mold within the rental unit by September 15, 2016. If a report from an independent source is not provided to the tenant by September 15, 2016, the tenants may reduce their rent as set out below in order to have his own report prepared.

I also provide an order that the landlord provide the tenants with a timeline as set out below and a copy of the permit for back deck repairs or replacement.

I decline to make an order regarding the carpets within the rental unit at this time.

As well as these orders and escalating rent reductions, **the tenants are entitled to a monetary order in the amount of \$1000.00 towards their loss of quiet enjoyment, loss of use of rental unit and facilities therein.**

Conclusion

I order that the landlord comply with the Act and the residential tenancy agreement.

I order that the landlord replace the blinds by August 31, 2016. If the landlord does not replace the blinds within the rental unit by August 31, 2016, the tenants are entitled to reduce their rent by \$100.00 each month of the tenancy until the blinds have been replaced.

I order that the landlord provide an inspection and subsequent inspection report regarding the quality of air and the possibility of mold within the rental unit by September 15, 2016. If a report from an independent source is not provided to the tenant by September 15, 2016, the tenants may reduce his rent by \$300.00 on October 1, 2016 in order to have his own report prepared.

I also provide an order that the landlord provide the tenants with a timeline and a copy of the permit for back deck repairs or replacement by September 30, 2016.

I decline to make an order regarding the carpets within the rental unit at this time but dismiss this portion of the tenants' claim (regarding carpets) with leave to reapply.

As well as these orders and escalating rent reductions, **the tenants are entitled to a monetary order in the amount of \$1000.00 towards his loss of quiet enjoyment, loss of use of rental unit and facilities therein.**

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: August 12, 2016

Residential Tenancy Branch