



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the tenant for a monetary order for loss or other money owed, to have the landlord make repairs to the unit, to reduce rent for repairs and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matters

At the outset of the hearing the tenant indicated that they have vacated the rental unit. Since the tenancy has ended, I find it not necessary to consider the tenant's application to have the landlord make repairs to the unit, or to reduce rent for repairs.

Issue to be Decided

Is the tenant entitled to a monetary order for loss or other money owed?

Background and Evidence

The tenancy began on December 1, 2010. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenant. The tenancy ended on September 4, 2016.

The tenant testified that they seek compensation for repairs that were not completed during their tenancy and for loss of quiet enjoyment.

The tenant testified that they had no hot water pressure in the kitchen faucet. The tenant stated that they notified the landlord that a problem existed. The tenant stated

that the landlord attended to inspect the faucet; however, the landlord did nothing to make the repair. The tenant stated that pressure corrected itself a few weeks later.

The tenant testified that the cloth dryer had no heat and would pinch their clothing as it was off balance. The tenant stated that the landlord did not make the necessary repair.

The tenant testified that the landlord breached their rights to quiet enjoyment, as they were woken up at 6:00am, 6:30am, 6:45am, 7:00am, 7:15am, 7:30am, by stomping, banging of doors, walking on the hardwood floors with high heels shoes, and their dogs tail was wagging hitting the floor and this was very loud.

The tenant states that they seek compensation in the amount of \$450.00 for the above stated reasons.

Filed in evidence for the tenant are emails. I have reviewed and considered the relevant emails.

The tenant's email dated August 8, 2016, which reads,

"it appears that **I broke it** and now it seems to have fixed itself, maybe it was just a simple piece of something stuck in the faucet"

[Reproduced as written.]
[My Emphasis added]

The landlord testified that they attended the rental unit to check the water pressure and the pressure was found to be function in all the taps, except for the faucet in the kitchen. The landlord stated that the faucet was replaced approximately a year earlier and they believe the faucet was not working properly do to the tenant's neglect. The landlord stated that a few weeks later the problem corrected itself, which confirms there was nothing wrong with the faucet or the lines.

The landlord testified that they had fixed the cloth dryer a few months earlier for the same reasons that the tenant has indicated at the hearing. The landlord stated that when they had the appliance repaired they were told by the appliance repair person, that the dryer was being overloaded and causing the machine to be unbalanced. The landlord stated that they determined that the tenant was responsible for the repair because it was the same problem that was identified earlier.

The landlord testified that the tenants claim for loss of quiet enjoyment is unreasonable. The landlord stated that the noise the tenant is hearing is normal household noise of their family getting ready for work and school and there have never been any issues with noises over the last six years. The landlord stated that the alleged noise complaints started only after the tenant was served with a notice to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant seeks compensation for loss of pressure of hot water in the kitchen faucet. However, the tenant acknowledged that they broke the faucet in the August 8, 2016, email. I find any loss of pressure was the tenant's responsibility. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's claim for compensation for loss of water pressure.

Both parties have provided a different version of events regarding the cloth dryer. The evidence of the tenant was the landlord is responsibility to maintain and repair. The evidence of the landlord was the tenant is overloading the appliance and it was the tenant's responsibility to repair, as they had it repaired three months earlier for the same reason.

I accept the landlord's version over the tenant's version regarding the cloth dryer for the following reasons. There was previous evidence that the tenant was overloading the dryer causing the dryer to be unbalanced. The dryer was again unbalance. I find it more likely than not that the dryer was again overloaded, as the tenant is the only person using the appliance.

Further, I question the credibly of the tenant as they denied any responsibly for the kitchen faucet at the hearing; however, the tenant admits they broke the faucet in the August 8, 2016, email. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's claim for compensation for loss of use of the dryer.

I further accept the landlord's version over the tenant's version that the noises the tenant was hearing were normal household noises, as the evidence supports this was a family getting ready for work and school.

Further, I find the tenant's claim of hearing the dog's tail wagging causing excessive noise on the floor, is highly unlikely and not reasonable. I find it more likely that the tenant is exaggerating any noises in retaliation for receiving the notice to end tenancy. I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenant's claim for compensation for loss of quiet enjoyment.

In light of the above, I dismiss the tenant's application. Since the tenant was not successful with their application they are not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application is dismissed.

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: October 07, 2016

Residential Tenancy Branch