



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on the first scheduled date and was adjourned to allow the parties an opportunity to consider settlement of the dispute, and my Interim Decision was provided to the parties. The hearing commenced on the second scheduled date, and the tenant and both landlords attended. The parties each gave affirmed testimony and were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for reduction in rent due to lack of repairs ordered?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this 1 year fixed term tenancy began on May 1, 2015 which reverted to a month-to-month tenancy and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided and the date that the fixed term ends

is not filled in. Rent in the amount of \$1,600.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$775.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a studio apartment of about 490 square feet in an apartment building.

The tenant further testified that the parties had participated in a previous hearing, on June 22, 2016, wherein the tenant sought repairs to the garburator in the rental unit. A copy of the resulting Decision has been provided. The landlords were ordered to repair it within 4 weeks, but didn't do that. The garburator was repaired on August 19, 2016, and in the meantime it caused the tenant inconvenience. Every time the tenant used the sink it would fill quickly and water would come up. Since the garburator was repaired, it's been fine. It was an old garburator that was blocking the movement of water, and was shaking to the point where the tenant was not comfortable using it at night.

Considering the date of the previous Decision, the tenant believes that the 4 weeks provided would have expired on July 25, 2016. On July 26, 2016 the tenant received a letter on the door from the landlords saying that the garburator has been ordered and would let the tenant know when the plumber was scheduled, but the 4 weeks had already expired. On July 29, 2016 the landlords sent an email to the tenant indicating that it would be repaired on the weekend, but the tenant was away and didn't receive the email until August 2. The tenant emailed back quickly with 4 preferred dates asking the landlords to give the tenant 48 hours notice, but the landlords ignored the email. The tenant waited for another 10 days and on August 11 applied for dispute resolution.

On August 15, 2016 the tenant received another letter on the door from the landlords dated August 14, 2016 stating that they didn't hear from the tenant and would arrive on August 19, 2016 to make the repair.

On August 19, 2016 the landlords repaired the garburator and a lamp in a closet that didn't work since the tenant moved in.

The tenant seeks compensation in the amount of \$1,162.50, being 5% of the rental amount from the beginning of the tenancy to the date the garburator was repaired.

The tenant also testified that the landlords have given contractors the tenant's phone number without the tenant's consent. The tenant seeks an order that the landlords obtain the tenant's consent in writing before providing the tenant's phone number to others.

The first landlord (AS) testified that at the beginning of the tenancy the tenant complained about the garburator not functioning, and the landlords said they would replace it if it was broken, but after the landlord looked at it, he told the tenant he wouldn't replace it. The tenant then threatened to sue the landlords financially for her time in this dispute and if successful she'd take the landlords to Small Claims Court for her time and effort.

The previous Decision is dated June 22, 2016 but the landlords were away from the Canada Day long weekend and received it on July 12, the day of their return. On July 26 the landlords ordered the garburator and sent a notice to the tenant about scheduling a time to replace it once it had been received. The tenant has acknowledged receipt of that email. The landlord emailed the tenant again on July 29 saying that the part had arrived and could replace it on the weekend, but never heard back from the tenant. The email in the tenant's evidence shows a reply dated August 2 listing preferred dates, but neither of the landlords received it. On August 15 the landlord posted notice to the door of the rental unit that it would be repaired on August 19, 2016.

The landlords offered to repair the light in the closet in May, 2016 but the tenant wanted to wait for the hearing. The tenant also raised the issue of a door lock which only required a tightening of 2 screws. The tenant texted the landlords at 7:00 a.m. saying the toilet was not functional and the landlords were there at 9:00 a.m. The landlords did not agree that the garburator needed to be repaired. A plumber looked at it, who said it was functional but old and not meant for large items.

The second tenant testified that the landlords have done due diligence in complying with the June 22, 2016 Decision. All repairs were completed within a reasonable time.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

I have read the June 22, 2016 Decision, which specifies that the tenant had applied for a repair order and a monetary order including a reduction of rent for repairs, services or facilities agreed upon but not provided. The tenant and one of the landlords were in attendance. The Analysis portion specifies: "The landlord is ordered to replace the garburator and to repair the closet light within four weeks of receiving this decision from the Residential Tenancy Branch." With respect to financial compensation, it states that

the *Act* allows the Arbitrator to reduce past or future rent by an amount equivalent to the reduction in the value of the loss suffered under the tenancy agreement. It also states that the reduction caused by the garburator is measured by the fact that the tenant waited a full 12 months between complaining about the problem and applying for a repair order and did not mitigate any loss. In this case, I find that any claim the tenant has with respect to a devaluation of the tenancy prior to June 22, 2016 has already been decided upon.

The Decision also states that, "However, if the landlord does not comply with the repair order contained in this decision the tenant may apply for a rent reduction or other monetary relief as may be appropriate."

Where a party makes a monetary claim against another party for damages, the onus is on the claiming party to satisfy the test:

1. That the party has suffered damages;
2. That the party has suffered such damages because of the other party's failure to comply with the *Act* or the tenancy agreement; and
3. What efforts the claiming party made to mitigate the damage or loss suffered.

In this case, the Residential Tenancy Branch made an order that the landlords repair the garburator within 4 weeks. If the Decision is deemed to have been received 5 days after it was mailed to the landlords, it is deemed to have been received on June 27, 2016, and 4 weeks after that is July 25, 2016. However, the landlords did not receive it before the Canada Day long weekend and received it the day they returned, July 12, 2016. Four weeks after that is August 9, 2016, and having it repaired on the 19th of August is 10 days late. Therefore, regardless of which calculation is used, there is no doubt that the landlords were late, for a short time.

Failing to comply with an order of the director is a serious matter. The difficulty I have is finding that the tenant suffered any damages as a result of the loss of a garburator or a light. The tenant testified that she felt uncomfortable using the garburator at night and that the sink filled quickly. I find the tenant's claim to be no more than a minor inconvenience that has not devalued the tenancy at all, and the tenant's application for monetary compensation is hereby dismissed.

With respect to the tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement, such contracts should be kept between the parties including private information. I order the landlords to refrain from providing others with the tenant's personal information including the tenant's phone number without the tenant's written consent.

Since the primary application has been dismissed, I decline to order that the tenant recover the filing fee for the cost of the application.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the landlords to comply with the *Act* by obtaining the tenant's written consent before providing the tenant's' personal information to others, including the tenant's phone number.

The tenant's application for a monetary order for recovery of the filing fee is hereby 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 28, 2016

Residential Tenancy Branch