



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDC RP OLC FF

Introduction:

Both parties made Applications and attended the hearing. Each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7 and 67 for damages caused by the tenant; and to recover the filing fee pursuant to Section 72.

The tenant applies for orders as follows:

- b) A monetary order or rent rebate as compensation for repairs not done to the property and for significant disturbance to his peaceful enjoyment contrary to section 28 of the Act;
- c) An Order that the landlord do the necessary repairs;
- d) An Order that the landlord cease disturbing his visitors; and
- e) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the property, that it is beyond reasonable wear and tear and the cost to repair it?

Has the tenant proved on a balance of probabilities that necessary repairs have been neglected by the landlord and that she has significantly disturbed his peaceful enjoyment and invaded his privacy?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in September 2013, that rent is currently \$896 a month and a security deposit of \$425 was paid.

The landlord claims the tenant plugged the sink in the kitchen costing her \$63 to have it unplugged. She said he dismantled the door lock which cost \$189 to repair and he broke off a drainpipe which cost \$126 to repair. She provided no invoices to prove her cost. She said the work was done by friends who give her the invoice after she has collected the money and paid them.

The tenant said the plumber had brought up dark gunk from the sink which was the result of year's accumulation. He said he has a strainer and the sink was not plugged due to something he did. He agreed he dismantled the door lock and described how he was with some friends and they could not get the door open. He called the landlord and she said she would arrange repair next day for it was very late. He was concerned for his safety as this door is the only exit so he dismantled the lock. Regarding the drain pipe, he said it was hanging by a thread when he moved in and it finally fell off. He said the landlord used the same pipe and just had a bracket installed which should not have cost \$126. The landlord said the tenant and friends had broken the pipe off when they were parking. When she accused him at the time, he said nothing.

The tenant's claim relates mainly to an ongoing problem with rats in his ceiling. He said he had complained about it since early in his tenancy but the first recorded email is on August 30, 2015 so he is willing to concede that is when he notified the landlord. The landlord said she lives upstairs and has no rats in her home. She alleges the problem is caused by the junk accumulated by the tenant. She provided photographs showing the accumulation of garbage around the basement doors. She said she provided some extermination items to the tenant. The tenant said she provided some sticky strips for mice and some poison for rats but it was not effective when he used it. There has been no professional exterminator hired to deal with the problem. The tenant said the rat problem in his ceiling has significantly affected his peaceful enjoyment for they are squealing and skittering overhead constantly. It is humiliating to have friends and family visit and the infestation affects his asthma.

The tenant noted other problems. An element in his range has been broken since August 9, 2016. He requests an Order to Repair it. He said the landlord constantly threatens to increase his rent because she accuses him of having another person staying, besides himself and his room mate. To prove this, she stops and questions his visitors about where they live which is an invasion of their and his privacy. He said that he only had a cat visiting for 2 weeks a long time ago. He has a problem with the landlord's maintenance person who is says is drunk and abusive to him. He said if the landlord gives him a time for repair, he or his friend will be home and he will leave the area while her maintenance person works. The landlord denied his allegations about the maintenance person and said she was always present and it was the tenant who

used abusive language. She said the tenant pays his rent late and the tenancy is unsatisfactory so she would like to end it. I referred her to section 47 of the Act and told her she needed to serve a formal Notice to End Tenancy and provide proof of her reasons if she intended to end the tenancy.

In evidence are statements from the parties, emails, photographs, and the tenancy agreement

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that there are some damages but I find insufficient evidence that this tenant caused the damage to the sink and drainpipe as this may have been a result of reasonable wear and tear. There is insufficient evidence of cause as no professional information on costs or cause has been provided. I find the tenant dismantled the door lock and is responsible for repair costs. However, I find the landlord has not satisfied item 3 above as she has not provided sufficient evidence of her cost to repair. I dismiss her claim for damages and give her leave to reapply. I find insufficient evidence that the tenant has unauthorized cats on the

premises so I dismiss her application to order them removed. The landlord accused the tenant of late payment of rent, of lying, being abusive and accumulating garbage which can lead to significant damage to the landlord's property by attracting rodents. As I pointed out to her in the hearing, she has the option of terminating his tenancy on one full month's notice according to section 47 of the Act but she must be prepared to provide proof of her allegations if it proceeds to a hearing.

In respect to the tenant's application, section 28 of the Act protects the tenant's right to quiet enjoyment including freedom from unreasonable disturbance and reasonable privacy. I find his evidence credible that he has had a significant problem with rat infestation for over a year, since at least August 30, 2015 when it was acknowledged in an email by the landlord. I find the weight of the evidence is that the landlord has neglected to adequately address this problem as she has hired no professional pest control persons. I find the tenant's evidence credible that the infestation has unreasonably disturbed him by keeping him awake at night and embarrassing him when he invites his family and friends to visit. I find providing the tenant with some rat poison has been inadequate to address the problem. However, I find based on the evidence and photographs submitted that the tenant is not mitigating his damages as required by removing any garbage or other items from the exterior of the home and safely storing his food inside to avoid attracting rats. He is ordered to do so.

I find also that his range has been broken since August 9, 2016 so he cannot use the oven. I find it is the landlord's obligation to maintain the property, including the tenant's appliances so a repair order will be issued.

I find further that the tenant's right to reasonable privacy has not been protected by the landlord as she stops and questions his friends to determine where they live. By doing this the landlord also contravenes section 30 of the Act which provides a landlord must not unreasonably restrict access to a person permitted on the residential property by the tenant. I find the tenant's evidence on these points credible as the landlord did not deny his allegations. An order that the landlord cease stopping and questioning the tenant's friends will be issued.

For the reasons stated above, I find the tenant entitled to \$50 a month rebate of rent for 14 months (August 2015 to October 2016) for a total of \$700. I find him also entitled to Orders that the landlord do the necessary repairs.

Conclusion:

I dismiss the application of the landlord with leave to reapply with sufficient evidence of her claim. I find she is not entitled to recover filing fees for her application due to lack of success.

I find the tenant entitled to a rent rebate of \$700 plus his filing fee for a total of \$800.

I HEREBY ORDER that the tenant may deduct \$800 from his next rent payment plus \$50 a month beginning in November 2016 until the landlord hires a professional exterminator to deal with the rat problem.

I HEREBY ORDER that the landlord have the range (oven) repaired by OCTOBER 31, 2016. I HEREBY ORDER that the tenant arrange a suitable time for entry to repair the range before then.

I HEREBY ORDER that the landlord cease and desist from questioning the tenant's friends and order her to allow them free access to visit the tenant.

I HEREBY ORDER the tenant to remove all garbage and other belongings from around the basement doors and to safely store all food items to mitigate his damages by not providing such attractions for rats.

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 19, 2016

Residential Tenancy Branch