



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, SS, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for repairs - Section 32;
3. An Order for a rent reduction - Section 65;
4. An Order for substituted service - Section 71; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to repairs?

Is the Tenant entitled to compensation or a rent reduction?

Is the Tenant entitled to an order for substituted service?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

It is noted that neither Party provided any documentary evidence. A written tenancy agreement was entered into with the tenancy starting in November 2009. Rent of \$1,800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$900.00 as security deposit. No rent has been paid since and

including August 2016. The Parties are scheduled for a hearing on November 22, 2016 on the Landlord's application for an order of possession.

The Tenant states that the garburator stopped working and was reported to the Landlord on July 7, 2016. The Tenant states that due to the problem with the garburator the Tenant has not been able to use the dishwasher and sink since.

The Landlord states that the garburator was only reported in August 2016 and that the Landlord sent her Agent who is not a plumber to inspect. The Landlord states that a plumber was then arranged however this plumber was turned away by the Tenant. The Landlord agrees to provide the Tenant with notice and have a plumber attend the unit to make repairs to the garburator no later than November 30, 2016. The Tenant states that no plumber ever appeared and that the Tenant would never have turned away a plumber as the Tenant wanted the repairs done.

The Tenant states that the hallway and bedroom closet doors are old (7 years) and through normal wear and tear keep coming off the tracks. The Tenant states that the Landlord was informed in July 2016 of the problem but has failed to make those repairs. The Landlord states that her Agent inspected the doors and that these repairs will not be done as the Tenant caused the damage and because the Landlord intends to move into the unit and will make repairs then.

The Tenant states that on June 7, 2016 the unit flooded from the toilet. The Tenant states that the building manager and Landlord were both informed and that a restoration company appeared and made repairs but left the toilet with a wobble causing a backup whenever there are plumbing issues in the building. The Tenant states that this toilet was completely unusable. The Tenant states that there is another toilet however this toilet also had a wobble and could only be used for liquids. The Tenant states that they would have to use a toilet outside the unit for other than liquid waste. The Tenant states that the Agent attended every couple of weeks to try to make repairs but was unable to do so and finally the Tenant called a plumber and had it fixed at the Tenant's expense.

The Tenant states that the bill was approximately \$400.00 and claims this amount. The Landlord agrees to pay this amount if the Tenant provides an invoice.

The Tenant states that due to the loss of use of the garburator, sink and dishwasher for the period July to November 2016 inclusive and due to the loss of use of the toilets the Tenant is entitled to either compensation equal to two months' rent or a retroactive rent reduction in the equivalent amount of two months' rent. The Landlord agrees that the Tenant is entitled to compensation but argues that a more reasonable amount would be a total of \$1,000.00 or a reduction of \$200.00 per month. The Landlord states that the sink and dishwasher still works and that the Landlord was not informed that the sink and dishwasher was affected. The Landlord states that after the restoration company made repairs it was believed that all was done and there was no indication of any remaining issues with the toilet. The Landlord states that the Agent did see a loose toilet and could have done a better job. The Landlord states that the Agent was shown the other toilet that was then tightened.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the Landlord's agreement to repair the garburator I dismiss the claim for an order compelling the Landlord to make such a repair. However should the Landlord fail to repair the garburator as promised and should the tenancy continue past the end of November 2016, the Tenant has leave to reapply for an order for repairs and compensation. Given the Landlord's agreement to provide compensation to the Tenant for the loss of use of the toilets and garburator, I find that that Tenant has substantiated such loss. As the Tenant otherwise has full use of the unit I find that the amount claimed by the Tenant is excessive. However considering the integral nature of the toilets and the kitchen appliances and fixtures, the amount of time that the Tenant was without the full working order of these items and consider the amount offered by the Landlord to be insufficient in this regard I find that the Tenant is entitled to the global amount of **\$2,000.00** for its losses during the tenancy. I include in this amount

compensation for the loss of use of the doors. Given the age of the doors I find on a balance of probabilities that the doors came off the track from normal wear and tear. Should the tenancy continue the Tenants have leave to reapply for repairs of the doors.

Given the agreement of the Landlord to repay the Tenant for the approximate \$400.00 plumbing bill on the provision by the Tenant of the plumbing bill, I dismiss this claim with leave to reapply should the Tenant provide such a bill and no payment is forthcoming.

As no issue or evidence was raised in relation to the claim for substituted service, I dismiss this claim. As the Tenant's application has met with some success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,100.00**. As the Tenant has not paid rent for some time I make this compensation a retroactive reduction in rent to be deducted from the rent owed to the Landlord.

Conclusion

The Tenant is entitled to the sum of **\$2,100.00**. This may be satisfied in full by deducting this amount from rents owed to the Landlord.

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: November 18, 2016

Residential Tenancy Branch