



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP O RP RR SS FF

Introduction

This matter convened on September 16, 2016 for 56 minutes during which the parties agreed to settle on some of the issues in dispute. The hearing was adjourned and my Interim Decision was issued September 16, 2016. As such this Decision must be read in conjunction with my Interim Decision. That Interim Decision included in part, an outline of the terms of the settlement agreement; an Order to the Landlord to submit an inspection report no later than October 28, 2016; and the following:

The hearing was adjourned. Notices of reconvened hearing are included with this Interim Decision. The Landlords and the Tenant were advised that if they did not attend the reconvened hearing a decision will be issued in their absence.

[Reproduced as written pg 2 para 4]

The hearing reconvened on November 16, 2016 at 10:30 a.m. and was attended by the Tenant. No one was in attendance on behalf of the Landlords. The hearing continued for 37 minutes during which time I monitored the teleconference system and no one on behalf of the Landlord signed into this proceeding during that time. As indicated in the Interim Decision, as listed in part above, the parties were advised that a decision would be issued in their absence, pursuant to Rule of Procedure 6.5. As such I continued to hear the Tenant's undisputed evidence regarding his request for monetary compensation, in absence of the Landlord.

On October 3, 2016 the Residential Tenancy Branch (RTB) received a 4 page submission from the Landlord which included a one page document titled "Report:" written on a corporate plumbing company's letterhead.

Issue(s) to be Decided

1. Has the Landlord complied with each item agreed upon and/or ordered during the September 16, 2016 hearing?
2. Has the Tenant proven entitlement to compensation for cleaning; the cost of area rugs; and lost wages?

Background and Evidence

During the September 16, 2016 hearing I heard undisputed evidence as follows: The Tenant had occupied the current rental unit since July 5, 2012 on a month to month tenancy. Rent began at \$950.00 per month and has subsequently been increased to \$990.00 payable on the first of each month. In approximately July 2012 the Tenant paid a security deposit of \$475.00.

The rental unit was described as being an apartment located in a three floor 58 unit building. The building was constructed sometime between 1950 and 1965.

Since approximately 2013 the kitchen sink in the Tenant's rental unit has backed up and overflowed flooding water onto the floor. The Tenant indicated this flood happened every time it rained. The Tenant described the incidents as a "geyser" of sewage or grey water coming up out of the sink drain. These floods have caused damage to the Tenant's two rugs.

The flooding issue was initially reported to the previous landlord. The current Landlord has managed the building for approximately two years and was advised of the flooding problem in approximately 2014.

In September 2016 the Landlord had someone put a snake down the drain and poured some liquid product down the drain and everyone assumed the problem had been fixed. However, that was not the case and the sink overflowed again. The Tenant has recently taken to putting a cloth, plate, and bucket of water over the drain to prevent the "geyser" from coming up into the sink and flooding onto the floor.

There had been previous drainage / flood issues in the rental unit which caused damage to the carpet and a black substance formed behind the baseboards in the Tenant's bedroom. The carpets were subsequently replaced; however, the baseboards and black substance were never remediated.

In addition to the requests settled upon in items 2, 3, 4, 5, and 6 of the Interim Settlement Agreement dated September 16, 2016, the Tenant had sought \$1,300.00 which was comprised of \$400.00 for cleaning up the flood seven times between 2014 and 2016 (40 hours x \$10.00 per hour); \$500.00 for the cost of two area rugs; and \$400.00 for lost wages calculated at \$25.00 x 16 hours.

On November 16, 2016 the Tenant provided an update relating to the settlement items as follows:

- 1) In absence of the Landlord at the November 16, 2016 hearing the Tenant declined to withdraw his application as the Landlord was not present to negotiate how they would move forward with his request for monetary compensation.
- 2) The Landlord provided the Tenant with drapes that did not fit his window. The Landlord took those drapes back and ripped out the pleats in order to make them

fit over the window. The Tenant submitted he is not happy with the replacement drapes as they look like nothing more than a “white sheet” tacked across his window.

- 3) The Landlord has removed the baseboards and remediated the black substance prior to October 7, 2106 as agreed.
- 4) The Tenant has received the two replacement rugs prior to October 7, 2016 as agreed. As such the Tenant withdrew his request for \$500.00 for the cost of the damaged rugs.
- 5) The Tenant testified that on September 29, 2016 the Landlord’s contractor attended his suite and conducted some work under his kitchen sink. He then heard the contractor in the room next door which housed the Landlord’s laundry machines. Ten minutes after the contractor left his suite the Landlord attended the suite and served the Tenant with a copy of the contractor’s report and a 2 Month Notice to end tenancy.

The Tenant submitted that although it had rained 28 out of the 31 days in October 2016, there have not been any instances of water gushing into his kitchen sink since the repairs were conducted on September 29, 2016. He stated he does not know what repairs were completed he only knew that the contract had been working for approximately 20 minutes in his place and then went into the room next door.

The Tenant questioned how the Landlord could have obtained the contractor’s report so quickly. He noted that the Landlord served the report and the 2 Month Notice upon him within 10 minutes after the contractor finished the work on September 29, 2016. He asserted he had been at home and there was no notice of entry prior to the notice he received September 28, 2016 for entry the next day.

The Tenant now sought \$800.00 and/or reduced rent for the \$400.00 for his labour to clean up the previous floods; \$400.00 for lost wages; and different drapes.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], 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 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Regarding the Tenant's request to have different drapes because he did not like the appearance of the replacement drapes, I find that despite the drapes being less appealing to the Tenant cosmetically, they are still fully functional and can still be used for their intended purpose. As such, I find the Landlord complied with the aforementioned settlement agreement as they provided clean drapes to the Tenant.

I accept the undisputed evidence of the Tenant that he suffered a loss of quiet enjoyment of his rental unit, in breach of section 28 of the *Act*, when having to deal with the flooding and subsequent cleanup. I further find that flooding resulted in a loss to the value of his tenancy; a loss which was the result of the Landlord's failure to maintain the property in compliance with section 32 of the *Act*.

Upon review of the amounts claimed by the Tenant, I find the Tenant's request for \$400.00 for his time and labour to clean up from the floods, to be reasonable compensation for his loss of quiet enjoyment, given the circumstances presented to me during the hearing. Accordingly, I award the Tenant compensation for loss of quiet enjoyment in the amount of **\$400.00**, pursuant to section 67 of the *Act*.

The monetary claim for rug replacement was withdrawn by the Tenant, as noted above.

Regarding the claim for lost wages, I find there was insufficient evidence before me to prove the Tenant was required to miss two scheduled days of work or to prove he suffered a loss of \$400.00 in wages. As such the request for \$400.00 lost wages is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenant the sum of **\$500.00** (\$400.00 + \$100.00) forthwith.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$500.00.

In the event this tenancy does not continue and the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$500.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

The Tenant submitted oral evidence that the water drainage problem was repaired / resolved on September 29, 2016. As such, I declined to issue the Landlord a repair order at this time.

Conclusion

The parties settled on part of the application for Dispute Resolution. The Tenant was primarily successful with his monetary claim and was awarded the sum of \$500.00. The Tenant reported that the water drainage problem had been repaired / resolved.

This decision is final, legally binding, and 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