



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

RR, O, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for authority to reduce the rent for repairs, facilities, or services agreed upon but not provided; for "other"; to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 07, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 9 pages of evidence he submitted to the Residential Tenancy Branch on October 11, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction as a result of the need to repair the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on September 01, 2015;
- the Tenant agreed to pay monthly rent of \$1,595.99; and
- the Tenant is still occupying the rental unit.

The Tenant is seeking a rent reduction, in part, because there is a hole in the hardwood floor.

In support of the claim for compensation for the damaged flooring the Tenant stated that:

- there is a hole, approximately 2" in diameter, in the hardwood floor;
- the hole is located near a breakfast bar;
- the hole is large enough for the foot of a stool could fall into it, which he contends is unsafe;
- when the rental unit was viewed the Landlord agreed that the hole would be repaired;
- he has sent the Landlord numerous emails asking her to repair the hole;
- the Landlord has responded to some of those emails by advising him that she is looking into the cost of the repair; and
- the hole has never been repaired.

In response to the claim for compensation for the damaged flooring the Landlord stated that:

- there is a hole, which is the size of a "loonie", in the hardwood floor;
- the hole is located near a breakfast bar;
- the hole is not large enough for a foot of a stool could fall into it;
- the hole has been there for a long time and is not a safety hazard;
- when the rental unit was viewed she did not agree to repair the hole, although she did agree to "look into" repairing the floor;
- the Tenant has inquired about repairing the hole and she has told him she is looking into her options;
- the floor is very old and it will be difficult to match the existing boards;
- she has obtained a quote for the repair, in the amount of \$1,800.00;
- she believes the cost of the repair is too expensive;
- the hole has never been repaired; and
- she has no plans to repair the floor at this time.

The Tenant is seeking a rent reduction, in part, because there was a delay in repairing the dishwasher.

In support of the claim for compensation for the dishwasher the Tenant stated that:

- a problem with the dishwasher was reported to the Landlord on February 01, 2016;
- a technician came to the rental unit on March 08, 2016 for the purpose of repairing the dishwasher;
- on March 11, 2016 the Landlord was informed that the repair was not successful;
- the dishwasher was replaced on June 07, 2016;
- they rinse their dishes before placing them in the dishwasher; and
- it is possible that the food particles clogging the drains were present at the start of the tenancy.

In response to the claim for compensation for the dishwasher the Landlord stated that:

- a problem with the dishwasher was reported on February 01, 2016;
- a technician went to the rental unit in March of 2016 for the purpose of repairing the dishwasher;
- the Tenant told her that the repair was not successful, although she cannot recall the date of that report;
- the dishwasher was replaced on June 07, 2016;
- the technician advised her that the problem with the dishwasher was related to the drain being clogged with food particles; and
- she suspects the Tenant is responsible for the clogging because he is not rinsing the dishes before placing them in the dishwasher.

Analysis

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to provide and 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.

I find that the Tenant submitted no evidence to establish that the hole in the hardwood floor contravenes any health, safety and housing standards.

I find that the Tenant submitted insufficient evidence to establish that the hole in the hardwood floor, having regard to the age, character and location of the rental unit, renders the rental unit unsuitable for occupation by a tenant. In reaching this conclusion I find there is insufficient evidence to corroborate the Tenant's testimony that the hole is unsafe or to refute the Landlord's testimony that it is not a safety hazard.

In adjudicating this matter I have viewed a photograph of the hole in the floor, which is not of good quality. On the basis of that photograph I am unable to conclude that the hole poses any significant safety risk. I am therefore unable to conclude that the Landlord has failed to comply with section 32(1) of the *Act* when she did not repair the hole in the floor.

There is a general legal principle that places the burden of proof on the party that is claiming compensation. In these circumstances the burden of proving that the Landlord promised to repair the floor rests with the Tenant.

In circumstances where one party submits a version of events and the other party disputes that version, the party bearing the burden of proof must provide sufficient evidence to corroborate their testimony. In the absence of any documentary evidence to support their version of events or evidence that places doubt on the credibility of the other party, the party bearing the burden of proof would fail to meet that burden.

I find that the Tenant has failed to submit sufficient evidence to corroborate his testimony that the Landlord promised to repair the floor or to refute the Landlord's testimony that she agreed to investigate the possibility of repairing the floor. As the Tenant has failed to establish that the Landlord agreed to repair the floor, I find that she is not obligated to repair the floor as a term of the tenancy agreement.

Section 67 of the *Act* authorizes me to order a landlord to compensate a tenant if the tenant suffers a loss as a result of the tenant not complying with the *Act* or the tenancy agreement. As the Tenant has failed to establish that the Landlord breached the *Act* or a term of the tenancy agreement, I dismiss his claim for compensation for the hole in the floor.

Section 27(2)(b) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one that is an essential service or a material term of the tenancy if the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence I find that the Tenant was without a properly functioning dishwasher for approximately 18 weeks. I find that an 18 week delay in repairing or replacing the dishwasher is unreasonable and that it constitutes a temporary reduction on a service or facility as defined by the *Act*. I therefore find that the Tenant is entitled to a rent reduction of \$270.00, which is the equivalent of \$15.00 per week, which I find to be reasonable compensation for the resulting reduced value of the tenancy.

In adjudicating this claim I find that the Landlord has submitted no evidence to support her suspicion that the Tenant is responsible for the clogging the dishwasher because he did not rinse the dishes before placing them in the dishwasher. I find it entirely possible that food particles became clogged as a result of extended use, including being used by other occupants prior to the start of this tenancy. In the absence of evidence to show that the Tenant used the dishwasher for a purpose for which it was not intended, I cannot conclude that the Tenant is responsible for the problem with the dishwasher.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$370.00, which includes \$270.00 in compensation for living without a dishwasher for 18 weeks and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I authorize the Tenant to reduce one monthly rent payment by \$370.00 in full satisfaction of this monetary claim.

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 24, 2016

Residential Tenancy Branch