



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *RR, RP, MNDC, MNSD, OLC, LRE, LAT, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order directing the landlord to have repairs done, reduce rent, and comply with the *Act*. The tenant applied for permission to change the locks and to suspend the landlord's right to enter the rental unit. The tenant also applied for compensation, for the return of a key deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Both parties provided extensive documentary evidence. The parties' testimonies, and evidence have been considered in the making of this decision, but I have not necessarily alluded to all the evidence and testimony in this decision.

During the hearing, the tenant withdrew his claim for authorization to change the locks and for a rent reduction.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance, repairs and providing adequate notice to enter the rental unit? Is the tenant entitled to compensation and the filing fee?

Background and Evidence

The tenancy started on April 01, 2014. The rental unit is an apartment. The current monthly rent is \$1,888.00 and is due on the first of each month. Prior to moving in the tenant paid a security deposit of \$900.00 and a key deposit of \$105.00. Just prior to this hearing the landlord returned \$65.00 of the key deposit to the tenant and is currently holding a deposit of \$40.00.

Both parties agreed that the apartment was listed for sale on September 26, 2016 and that there were a total of three showings on September 30, October 02 and October 03, 2016. The tenant agreed that proper notice was provided by the landlord. The tenant stated that the viewing on October 03, 2016 was scheduled for 4:30pm. The tenant returned to the rental unit around 5:00 pm. Shortly after, there was a knock on the door and a potential buyer along with a realtor requested to view the unit. The tenant stated that neither the landlord nor the landlord's agent was present and he was uncomfortable with the landlord providing access to the rental unit to other realtors and their clients.

The landlord stated that his realtor's assistant was present to give access to the viewing party, but did not enter the unit. She waited downstairs while the realtor and his client viewed the unit. The landlord filed a copy of an email from the realty office confirming this arrangement.

The tenant stated that viewings were scheduled for October 09 and 10 and he was not sure if they took place or not. The landlord stated that there were no showings on these days but on October 10, 2016, the landlord gave the tenant a written request for 12 showing times for the period of October 13 to November 07, 2016.

The tenant made this application for dispute resolution on October 11, 2016. The landlord stated that upon receipt of the notice of hearing, the request for showings was cancelled and the landlord did not show the unit until November 26, 2016. The tenant is claiming compensation in the amount of 40% of the daily rent for the alleged illegal entries by the landlord made as of the date of this decision. The tenant has not put down the monetary value of his claim.

The tenant also claimed the return of the key deposit that the landlord was holding along with a penalty of \$105.00 that the tenant believes must be imposed on the landlord for wrongfully accepting a deposit for keys that provide access to the rental unit. At this time the landlord is holding \$40.00 and agreed to return the deposit to the tenant.

The tenant stated that a light that is located over the stove and under the microwave oven has not worked since the start of tenancy. Six months into the tenancy, in October 2015, the tenant made a complaint to the landlord. The parties communicated with each other and reached a conclusion that the microwave oven would have to be replaced as the light could not be fixed. The landlord stated that the light did not ever work since he purchased the rental unit and during the time he occupied the unit, he would position the track lights to provide adequate lighting over the stove.

The tenant also stated that puck lights under the cabinets did not work, but have since been replaced and were not an issue at the time of the hearing. The tenant is claiming a return of a portion of rent since the start of tenancy as compensation in the amount of \$2,666.20, for the inoperative lights.

The tenant also stated that in November 2015, he complained about the dryer. The landlord responded to the complaint in a reasonable time and replaced the dryer. Sometime prior to March 2016, the tenant complained that the second dryer was not heating adequately. The landlord took the first dryer to a technician who found no problems with it. The landlord attempted to replace the second dryer in the unit with the first one that had been removed earlier, but the tenant refused to allow the landlord to reinstall the original dryer. The landlord eventually replaced the dryer with a refurbished one that came with a warrantee. The tenant agreed that as of the date of the hearing, the dryer was in good working order. The tenant is claiming compensation in the amount of \$1,213.96 which is derived from a percentage of rent paid for 14 months while the tenant has problems with the dryer.

The tenant is also claiming the filing fee, courier fees and for time spent to put this application together.

The tenant is claiming the following:

1.	Loss of quiet enjoyment – amount not provided	\$0.00
2.	Unlawful key deposit	\$210.00
3.	Loss of kitchen lighting	\$2,666.20
4.	Loss of use of dryer	\$1,213.95
5.	Filing fee	\$100.00
6.	Courier fees – amount not provided	\$0.00
7.	Compensation for time to put application together	\$944.00
	Total	\$5,134.15

Analysis

1. Loss of quiet enjoyment

The tenant has described his claim as:

“We claim 40% of daily rent (daily rent is \$62.07) for all entries that are conducted unlawfully or unreasonably as of the decision date.”

The tenant agreed that the landlord provided adequate and proper notice for the three showings that took place shortly after the unit was listed for sale. Based on the testimony of both parties, I find that by giving the tenant adequate notice to enter the rental unit for a valid reason which was to show the rental unit to prospective buyers, the landlord was compliant with s. 29 of the *Act* and therefore this portion of the tenant's claim for unlawful or unreasonable entries into the rental unit is dismissed. During the hearing, at the tenant's suggestion, the landlord agreed to provide at least 72 hours' notice by email to the tenant for access to the unit for a showing or a visit.

2. Unlawful key deposit - \$210.00

The tenant has three keys in his possession and the landlord had received \$105.00 as a deposit for these keys. The tenant informed the landlord that he was not permitted to take a deposit for keys that provided access to the rental unit and accordingly the landlord returned \$65.00 to the tenant. The tenant is now seeking the return of double the deposits and has made reference to the doubling provision of s.38 of the *Residential Tenancy Act*.

Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenancy has not yet ended and therefore the doubling provision of s.38 does not apply. In any event the landlord returned \$65.00 to the tenant and kept \$40.00 as deposit for the extra keys given to the tenant. The tenant argued that there were no extra keys and all keys provided access to the rental unit. The landlord agreed to return the balance of \$40.00 to the tenant. The tenant may make a one-time deduction of \$40.00 from a future rent.

3. Loss of kitchen lighting - \$2,666.20

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

Based on the testimony of both parties I find that the landlord fulfilled his obligations by acting on the complaints he received, in a timely manner. The tenant made a complaint about the inoperative light above the stove, six months into the tenancy and made a monetary claim for compensation two years and 6 months after the start of tenancy.

Both parties agreed that there was correspondence between the two parties and it was finally determined that in order to replace the light, the microwave oven would have to be replaced. The landlord offered an alternative solution that worked for him when he occupied the rental unit. The solution was to position the track lights so that they would shed light on the stove. The landlord agreed to install a light in the stove area.

The tenant also complained about the puck lights under kitchen cabinets that were not working. The landlord took action on the tenant's complaint and the tenant agreed that at the time of the hearing the lights were operational.

The tenant has made a claim of \$2,666.20 for the loss of lights during the tenancy. Based on the sworn testimony of both parties, I find that by responding to the tenant's complaints in a timely manner, the landlord met his obligations under the *Act* with regard to maintaining services and facilities that are essential to the tenant's use of the rental unit as living accommodation. I further find that the tenant has made an unreasonable claim for the loss of partial lighting, two and a half years into the tenancy.

The tenant had the option of filing for dispute resolution early in the tenancy and obtaining an order to have the lights fixed, if it was a serious enough deficiency that caused him a great deal of inconvenience. The tenant chose to wait for two years and six months before making this application. In addition, the tenant had track lights that could be positioned to cast light in the cooking area and therefore was not without any lighting. For these reasons the tenant's claim is dismissed.

4. Loss of use of dryer - \$1,213.96

Based on the testimony of both parties and the documents filed into evidence, I find that the tenant has not proven negligence on the part of the landlord with regard to maintenance of the dryer. Upon receipt of the tenant's complaint, the landlord acted in a timely manner and provided the tenant with a replacement dryer. The landlord filed an invoice from an appliance store that checked out the first dryer and found that it was worked without problems. The tenant refused to let the landlord install this first dryer when he complained about the replacement dryer. The landlord finally just replaced the dryer with a refurbished one which came with a warrantee.

Based on the above, I find that the landlord acted in a responsible manner and provided the tenant with a dryer upon receiving complaints from the tenant. Since the tenant has not proven negligence on the part of the landlord, I dismiss the tenant's claim for compensation.

5. Filing fee - \$100.00

The tenant has not proven most of his claim and therefore must bear the cost of filing his application.

6. Courier fees

7. Compensation for time to put application together - \$944.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the tenant's claims for the above two items are dismissed.

Conclusion

- The tenant may make a one-time deduction of \$40.00 from a future rent.
- The landlord must provide at least 72 hours of notice by email, prior to the time of entry into the rental unit.
- The landlord will provide additional lighting in the area of the stove, in the kitchen.
- The remainder of the tenant's application is dismissed without leave to reapply.

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: December 02, 2016

Residential Tenancy Branch