



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, pdf, rr

Introduction

The tenant applies for an order that the landlord provide services or facilities required by law, for an order for a rent reduction until such services or facilities are provided, and for monetary compensation.

The tenant attended the hearing. The landlord also attended the hearing, along with her son who provided testimony as well as translation services for his mother.

The landlord acknowledged receipt of the tenant's claim and written evidence and photographs. The tenant had not received the landlord's evidence and photographs, as these were sent by registered mail to the tenancy address after the tenant had already moved out.

The tenant initially requested an adjournment of this hearing, in order to try to find witnesses that would help verify his claim. He then reconsidered and requested that the hearing proceed, even though he had not received the landlord's evidence. I have not considered the landlord's written evidence, but make this decision on the basis of the landlord's oral testimony at the hearing, given in reply to the tenant's various allegations and claims.

As the tenancy has ended, I need not address the tenants' claim for an order that the landlord provide services or facilities required by law, for his claim for an order for a rent reduction until such services or facilities are provided. These issues have become moot. This decision therefore deals with the tenant's claim for monetary compensation from the landlord.

Issue(s) to be Decided

Is the tenant entitled to a monetary award, and if so, in what amount?

Background and Evidence

This tenancy began October 20, 2015. Monthly rent was \$600.00 due and payable on the 1st day of each month. The tenant rented a suite in this home, which also contains other rental suites. A total of 15 people resided in the various suites in the home during the course of the tenancy, but the tenant had exclusive possession of his suite. A walk

through occurred at the start of the tenancy, but no written condition inspection report was ever completed by the landlord. The tenancy ended on or about January 9, 2017, when the tenant was served by a Writ of Possession and removed from the premises by West Coast Court Bailiffs. The Writ was based upon an Order of Possession, obtained by the landlord on December 19, 2016 on the basis of unpaid rent.

The tenant seeks compensation of \$4,875.00, for the following:

- \$1,560.00 for a bedroom door that wouldn't close;
- \$ 525.00 for organic juice (part of a special diet) due to a broken fridge;
- \$ 880.00 for the cost of an inhaler for 4 months, needed due to black mold;
- \$ 240.00 for no fridge for 6 weeks;
- \$ 500.00 for no oven for 10 months;
- \$ 320.00 for 17 hours of driveway snow and ice removal;
- \$ 500.00 for loss of quiet enjoyment of space;
- \$ 200.00 for a damaged painting, torn in the course of replacing the fridge;
- \$ 150.00 for a fish tank that was unusable.

The landlord denies the claim in full, alleging that:

- the tenant had full use of the bedroom, and was satisfied with the condition of the entrance when he took possession;
- the tenant was given free food and one month free rent when the fridge failed, even though the failure was likely attributable to the tenant unplugging the fridge;
- the need for an inhaler was likely attributable to the fact the tenant smoked in the unit, even though not permitted to so under the tenancy agreement;
- the fridge worked at the start of the tenancy, and was replaced when the landlord found out it was no longer working.
- the oven was in good working order when the tenancy began, but it was not properly maintained by the tenant. The landlord offered a replacement stove but never heard from the tenant;
- the landlord did remove snow whenever required;
- the premises did not contain mold, and was just dirty from the tenant. The tenant never complained about any ongoing ant problem. The tenant refused at first to allow an electrician in, but eventually an electrician repaired the problem causing a faulty breaker to go off;
- the premises were furnished, and any paintings belonged to the landlord;
- the fish tank was outside and was never used by the tenant. He left it behind when he vacated.

Analysis

I have decided the various components of the tenant's claim. In doing so, I note that the tenant provided no receipts or estimates to support his monetary claim. I note that the landlord disputes that some of the photographs provided by the tenant are of a different residential unit than the one he was renting. I have taken into account the landlord's failure to prepare a condition inspection report, which is a mandatory requirement of a landlord in all tenancies. I also note that the testimony of the parties differed in many respects. In some respects, I do not consider the testimony of the tenant credible or reliable and prefer the testimony of the landlord. In other respects, I prefer the testimony of the tenant over that of the landlord. I have noted below the instances where my decision is based upon the preferred testimony of one party, or any of these noted other factors.

1. Claim of \$1,560.00 for a bedroom door that wouldn't close – This portion of the tenant's claim is denied. If in fact the door was not functional, the appropriate process and remedy for the tenant would have been to provide the landlord with a written notice the moment this repair was required, and if not attended to in a reasonable time by the landlord, to apply for an order for repair. To fail to do so for 13 months, and then seek a monetary claim for such a large sum is an abuse of process.
2. Claim of \$525.00 for organic juice (part of a special diet) due to a broken fridge – The tenant failed to disclose, but never denied, that he had already received compensation as well as free food related to the loss of use of the fridge. I prefer the evidence of the landlord in this regard, and dismiss this portion of the tenant's claim.
3. Claim of \$880.00 for the cost of an inhaler for 4 months, needed due to black mold. The landlord denied that the tenant ever complained about black mold, and alleged the premises were just dirty, and also that the tenant smoked in the premises. I prefer and accept the testimony of the tenant, however, that the landlord knew or should have known of the presence of the mold, but took no appropriate steps to remediate the problem. I note that while many of the tenant's photographs show only mildew, there are also photographs that clearly show black mold. I accept the tenant's oral testimony as to the presence of black mold in the unit. I am provided no medical evidence to support the tenant's contention that his use of the inhalers was entirely attributable to the presence of mold, but it is reasonable that the presence of mold at least partially contributed to his 4 months of respiratory difficulties in the premises. Under these circumstances, I consider it appropriate that the landlord compensate the tenant for half of the costs of his inhalers, in the sum of \$440.00.
4. Claim of \$240.00 for no fridge for 6 weeks – I accept and prefer the landlord's testimony that the tenant was already compensated for the loss of use of the fridge. This portion of the claim is denied.

5. Claim of \$500.00 for no oven for 10 months – the tenant confirmed the oven worked at the start of the tenancy, but that the broiler stopped working due to ordinary wear and tear. The landlord testified another oven was offered, but the tenant never responded. The tenant testified that the landlord did provide a further toaster oven, but he could not use it for larger items such as lasagna. I note that the tenant never testified that the stove top elements and the oven itself (as opposed to the broiler) were not working. As such, I must assume the tenant continued to benefit from the oven, whether or not the broiler worked. Even if the broiler repair was due to ordinary wear and tear, the appropriate process and remedy for the tenant would have been to apply for an order for repair at the time the broiler element no longer worked. To wait 10 months, and now seek a monetary claim of \$500.00 is an abuse of process. For all these reasons, this portion of the claim is denied.
6. Claim of \$320.00 for 17 hours of driveway snow and ice removal – the burden of proof of this portion of the claim lies with the tenant, and he has not proven on a balance of probabilities that the removal of snow was the landlord's responsibility, as opposed to his own responsibility or that of another occupant at the premises. He provided no evidence of payment to someone for snow removal, or evidence of having removed it himself. This portion of the claim is denied.
7. Claim of \$500.00 for loss of quiet enjoyment of space – To establish this portion of the claim of a breach of the covenant of quiet enjoyment, the tenant must show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. In a case of significant disruption, a tenant may be entitled to reimbursement for loss of enjoyment of the use of the property. In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord to address the concern.

In this regard, the only aspect in which the tenant has demonstrated a serious breach by the landlord is regarding the issue of black mold. The presence of black mold can lead to a serious health problem, and it is incumbent upon any landlord when aware of the presence of black mold to take immediate steps to remediate the problem. I accept that the landlord knew or should have known of this mold problem, and did not attend to the cause of the growth of mold. I have already found that the presence of mold contributed to health problems of the tenant, and I accept that there was a consequential loss of quiet enjoyment of the premises incurred by the tenant for the alleged 4 month period. I award the sum of \$125.00 per month for this loss, which totals \$500.00.

8. Claim of \$200.00 for a damaged painting, torn in the course of replacing the fridge - While the landlord also had paintings at the premises, I accept that the

tenant's own larger painting of trees and forest was damaged by the landlord's son when he moved the fridge. In the absence of any receipt, appraisal, or supportive estimate of value, I award nominal damages of \$50.00.

9. Claim of \$150.00 for a fish tank – I am provided no evidence as to the amount if any that the tenant paid for the fish tank, or why it could no longer be used or repaired. This portion of the claim is denied.

The total sum awarded to the tenant is \$990.00.

Conclusion

The landlord must pay the sum of \$990.00 to the tenant.

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: January 31, 2017

Residential Tenancy Branch