



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and another remedy for loss of quiet enjoyment pursuant to section 28. During this hearing, the tenant stated that she was no longer seeking any remedy with respect to loss of quiet enjoyment.

As a result of the tenant's application as outlined above, both parties (the landlord and tenant) attended the hearing. Each party was given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant was present but represented by an agent (her mother) who provided the majority of the evidence and submissions at this hearing. The landlord confirmed receipt of the tenant's application for dispute resolution with notice of this hearing as well as the evidence sent by the tenant by registered mail. The tenant provided receipts and tracking numbers for the mailings. The landlord objected to being party to another dispute resolution hearing as a result of this tenant's actions and applications.

Preliminary Matters:

By way of background to this particular application and this tenancy, I note that there have been several previous dispute resolution hearings. The tenant previously applied to the Residential Tenancy Branch for repairs to the unit. In a February 27, 2017 decision, the tenant's application was dismissed with leave to reapply. As a result of a review of another decision by a Residential Tenancy Branch arbitrator, a reconvened hearing was held to consider the cancellation of a 1 Month Notice to End Tenancy for Cause issued by the landlord. On April 11, 2017, the landlord's 1 Month Notice was cancelled and the tenancy continued.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss under the Act? Is the tenant entitled to reduce her rent as a result of the landlord's failure to make repairs?

Background and Evidence

This tenancy began on September 1, 2014 as a month to month tenancy with a rental amount of \$760.00. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The landlord continues to hold a \$380.00 security deposit paid by the tenant at the outset of this tenancy. The tenant remains in the rental unit. She has applied for repairs and to reduce her rent or receive a monetary order as a result of the landlord's failure to make repairs. The tenant's agent stated that the tenant's application was based on two repairs that she requires for her rental unit: repair of the oven door and repair of a water leak in the laundry room.

The tenant's agent testified that the oven door was loose when she moved into the rental unit in September 2014 and that it slowly got worse. She submitted photographic evidence to show that the door has now come unhinged. She testified that she cannot use the oven and feels her children are unsafe with its current condition. She testified that she gave up asking the landlord to fix the oven door over a year ago. She testified that she attempted to identify the model and serial number of the oven but it was very old and had no distinguishing information on it.

The landlord testified that the tenant must have broken the oven door as it was in fine condition prior to her move-in. The landlord testified that the tenant never asked him to fix the oven door and that he will not repair it because she broke it. The landlord and tenant agree that no condition inspection was done at move-in and that no condition inspection reports were created with respect to this tenancy.

The landlord testified that he first became aware of a leak in the laundry room of the residential premises on February 10, 2017 when he received a text from the tenant's upstairs neighbour. He testified that he attempted to contact the tenant after that date and that he left her a message. The tenant testified that she does not have voicemail on her phone.

The landlord testified that, when he became aware of the leak in the laundry room, he tried to have a plumber attend to resolve the leak. He testified that he thought the leak was fixed. He testified that he had not heard from the tenant that the leak was an ongoing issue until this hearing. He acknowledged receiving the tenant's materials for this hearing but testified that there was nothing in the tenant's materials about an ongoing leak. The landlord also testified that the leak was in a common area (the

laundry room) and that, therefore the tenant should not be entitled to compensation for any ongoing issue.

The tenant submitted that, as well as being the common use laundry room for the residence, the area is also the mud room for herself and her children. She testified that they keep all of their coats and shoes in this area – that all the tenants do so. She testified that all of her shoes had been discarded as a result of damage from the leak. She testified that she chose to be cautious in throwing out her shoes, particularly because she was unsure whether it was sewage water leaking.

The tenant testified that she has undergone verbal and mental harassment by the landlord and the landlord's father who also resides at the residential premises. However, after describing acts of intimidation by the landlord on a variety of occasions (which the landlord vehemently denied), she testified that she is no longer seeking a remedy with respect to any loss of quiet enjoyment ("harassment"). The landlord testified that all of the accusations of threats are false and that they are simply a way for the tenant to justify allowing her boyfriend to reside in the rental unit longer than he should be allowed to. The landlord stated that, if the tenant was really afraid of him, she would purchase a lock for her front door as it is broken: it does not close or lock.

Analysis

Section 32 of the *Act* provides the landlord and tenant obligations to repair and maintain the rental unit. The landlord's obligations are as follows;

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) 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 has provided sufficient evidence, mostly undisputed by the landlord, of a leak in the laundry room. I find that the leak has impacted her tenancy as she is unable to do laundry and had to throw out some of her shoes. Furthermore, I accept the testimony of the tenant that she has made multiple verbal and at least one written request for the landlord to make repairs to the laundry room. I accept the testimony of the tenant that the leak in the laundry room has remained unresolved as of the date of this hearing. The landlord has acknowledged the problem and indicated that, now he is aware that there is still an active leak, he will investigate and repair.

I find that the tenant has also provided sufficient evidence (testimony and photographic), mostly undisputed by the landlord, that the oven door has come off its hinges/broken off. To have a home suitable for occupation, one must have a functional oven.

Furthermore, I find it is a safety hazard to have an oven in the rental unit without a door. However, I also acknowledge that there is a lack of evidence to show that the landlord was aware that the oven was broken prior to notice of this hearing. Now that he has been made aware, I find that the landlord is required to repair the oven door. However I find that the landlord is not solely responsible for the cost of the repair to the oven door.

The landlord was unable to provide any evidence of the age of the oven (and oven door) in the rental unit. The landlord agreed that the residence containing the rental unit was more than 10 years old. The landlord testified that he was able to remember any repairs to the oven in the rental unit. The landlord was not able to provide any evidence of whether the oven (and door) had ever been repaired. Given that the Residential Tenancy Policy Guideline No. 40 suggests that an oven/stove will require replacing approximately every 15 years, and given that the landlord agreed that the residence itself was more than 10 years old, I find that the oven should be repaired or replaced, if necessary.

Any loss of use of a part of the property, services or facilities as originally provided within the residential tenancy agreement may, under section 27 and 32 of the *Act*, may result in a rent reduction that is equivalent to the reduction in the value of the tenancy agreement resulting from any loss of use or restriction to use. With respect to the oven door, I find that the tenant has provided sufficient evidence that the oven/stove requires repair to have a functioning door. I find that the tenant did not provide sufficient evidence to show that she had advised the landlord that the oven door required repair prior to making this application. In consideration of the obligation on the tenant to report damage, I find that the tenant is not entitled to recover loss with respect to the oven door. However, I order that the landlord repair the oven door by April 30, 2017.

With respect to the laundry room leak, I find that the landlord was aware of the leak by February 10, 2017. I further find that the landlord attempted to address the leak issue but that the leak has not been sufficiently repaired. Based on the testimony of both parties, as well as the documentary evidence, I find that the landlord is obliged to further repair the laundry room leak to provide laundry facilities and common room use. As the tenant did not provide any documentation to support a claim to replace her shoes, I will not award the tenant any amount reflecting this loss.

While the landlord has taken some steps to address this repair between February 10, 2017 and the date of this hearing, those steps have been insufficient. After requiring

repairs, the landlord has some obligation to ensure that the repairs have been done satisfactorily. As I find that the landlord has not met his obligations with respect to this required repair, I find that the tenant is entitled to a nominal rent reduction for their loss of use of the laundry room and common area contained within the laundry area. I find that the tenant is entitled to \$50.00 per month to reflect that she has not had use of the laundry room: 2 months as of the date of this decision. I find the tenant is entitled to a monetary order in the amount of \$100.00 as of the date of this hearing and subsequent decision.

As of the date of this hearing, and until the date that repairs begin on the rental unit with respect to the leak, the tenant may continue to deduct rent by a further \$50.00 each month. Therefore, if repairs to the leak are not completed by April 30, 2017, the tenant will also be entitled to reduce the rent due on May 1, 2017 by an additional \$50.00 per month; and the following month (May 30/June 1, 2017) \$100.00. The tenant may continue to reduce her rent by an increasing \$50.00 per month on an ongoing monthly basis as of the date the rent is due each month until the repairs of the leak in the laundry room are satisfactorily completed: when water no longer leaks in laundry room.

As of the date of this hearing, and until the date that repairs begin on the rental unit with respect to the oven door, the tenant may deduct rent by \$50.00 each month. Therefore, if repairs to the oven are not completed by April 30, 2017, the tenant will be entitled to reduce the rent due on May 1, 2017 by \$50.00 per month; and the following month (May 30/June 1, 2017). The tenant may continue to reduce her rent by \$50.00 per month more an ongoing monthly basis as of the date the rent is due each month until the repairs to the oven door in the rental unit are completed.

By way of clarification, the tenant is entitled to reduce her rent by \$50.00 per month as of May 1, 2017 if the leak in the laundry room continues. She can increase the reduction by \$50.00 each month until the repair is complete; \$50.00 the first month and \$100.00 the second month and \$150.00 the third month and ongoing until repair is complete. The \$50.00 deduction for the oven repair is a separate amount. As well as any reduction in rent for the leak, the tenant is entitled to reduce the rent by \$50.00 each month until the repair is complete or the oven is replaced.

The tenant is also entitled to a monetary order of \$100.00 representing 2 months with a laundry room leak.

Conclusion

I grant a monetary order in favour of the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order that, as long as the tenant continues to reside in the rental unit and until the laundry room ceases to have a leak, the tenant is entitled to continue to deduct an additional \$50.00 rent per month from her rent. When the laundry room leak is repaired, I order the tenant will return to her full monthly rental amount.

I order that, as long as the tenant continues to reside in the rental unit and until the oven is repaired to have a functioning door (or is replaced), the tenant is entitled to continue to deduct \$50.00 rent per month from her rent. When the oven door is repaired, I order the tenant will return to her full monthly rental amount.

I caution both parties to ensure that they are meeting their obligations as tenant and landlord in compliance with the Act.

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: April 27, 2017

Residential Tenancy Branch