



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP RP

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord do emergency repairs pursuant to section 33; and
- b) That the landlord repair and maintain the property pursuant to section 32;
- c) That the landlord provide facilities required by law pursuant to section 27;
- d) That the landlord protect their peaceful enjoyment by getting rid of a mouse infestation;
- e) Compensation for poor living conditions due to necessary repairs not being done;
- f) To obtain a refund of his security deposit; and
- g) To recover the filing fee

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Are they entitled to orders that the landlord do necessary repairs and to compensation for repairs not done? Are they entitled to recover their filing fee?

Preliminary Issue:

The tenant had reversed his first and last name on his Application and requested it be amended in the Decision and Order. The landlord did not object. The amendment was made.

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a difficult one hour hearing as the tenant had to be continually reminded not to interrupt the landlord while they were replying to

his allegations. The undisputed evidence is that the tenancy commenced August 1, 2016 on a fixed term lease to July 31, 2017. Rent is \$1350 a month plus utilities; the tenant said these were \$140 a month and the landlord said they were \$120 a month. A security deposit of \$675 was paid and the landlord said they have filed an Application to be heard on May 21, 2017. The tenant said he does not want to give his forwarding address in writing because he does not trust the landlord. I advised him of the necessity under section 38 but he says he does not care about that.

The tenant said they served a one month Notice to End Tenancy effective May 1, 2017 and did not pay rent for April. He said his co-tenant M. abruptly left before the effective date of the Notice, leaving many belongings behind and he cannot contact him. He claims a rent refund of \$5880 based on a refund of half of each months rent for 8 months of very bad living conditions plus a refund of his security deposit.

On his Application, he listed four problems. He said he had many more but I advised him that he must limit himself to his claim. Based on the principles of administrative justice, the landlord must have notice of his claim and the opportunity to respond to it. Both parties agreed there had been a City Inspection in November 2016, the City found the tenant's suite to be illegal and the owner must do certain renovations if he wishes to comply and make it legal. There was disagreement on dates with the tenant alleging the owner had to be in compliance by March 3, 2017 and the landlord alleging they received a letter on April 6, 2017. Neither party provided any evidence to support their oral testimony.

The tenant listed the problems:

1. There was no fire escape in the house as the window was nailed shut which left only the door as the one exit. The landlord said the house was built to code at the time but the window could not be opened.
2. There was inadequate heat. The upstairs tenant had control and it was very cold, particularly from November 2016 to February 2017. He said his cotenant contacted the landlord and they asked the upstairs to turn up the heat. The landlord said they received no other complaints.
3. There was a mouse problem. The tenants reported it in October or November. The tenant said the landlord had a man come and put down traps but he never came back and the problem persisted. The mice were in the walls also. They told the landlord but had no further response except being told to clean up the unit. The landlord said they got a Pest Control company who put down traps and reported there was tenant clutter and food left on the table. He said they sent an email to the tenants on October 27, 2016 advising them of this. They said they got no further calls on it. The tenant said they did clean up and when

there were still mice issues, they called the receptionist of the landlord (the contact number on their lease) and she promised to pass on the message.

4. No ventilation. The tenant said the bathroom fan did not work so moisture and mold built up. The stove exhaust fan did not work so he had to open the door if he was cooking. The landlord said on the inspection with the tenant, the fans worked fine but the kitchen exhaust was found to be inadequate.

The tenants vacated and the landlord said they are working to upgrade based on a contractor's report. Although the tenants had a fixed term tenancy to July 31, 2017, they are willing to call the tenancy at an end on April 30, 2017 but they believe they are entitled to rent for April 2017 so they will claim that. They have a hearing on May 21, 2017.

No documentary evidence was provided. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find the tenants have vacated and the landlord is working to comply with a City Order. Therefore, I decline to make orders for repair or other orders listed in a) to d) of the request. I find they are no longer relevant to this tenancy as the tenants have vacated. The remaining issues are whether they are entitled to compensation for repairs not done and/or for poor stressful living conditions and to obtain a refund of their security deposit?

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove on the balance of probabilities that the landlord through act or neglect violated the Act and caused them to suffer damages or loss. I find section 32 of the Act provides a landlord must provide and maintain property in a state of decoration and repair that complies with health, safety and housing standards required by law and makes it suitable for occupation by the tenant.

I find the weight of the evidence is that there was no second exit from the unit as the window was not able to be opened. I find this did not comply with safety standards required by law. I find this caused considerable anxiety and fear of being trapped to the tenants who had no fire escape while they lived there. While the landlord did not deliberately cause this problem, they rented a suite that did not meet City standards so violated section 32 of the Act and put the tenants in possible jeopardy. I find the tenants entitled to compensation for this non compliance.

Regarding the heating, I find the landlords responded to the tenants' complaint of being cold by requesting the upper unit to turn up the heat. I find they did not through act or neglect cause this problem of discomfort. I find insufficient evidence to support the tenant's claim of inadequate insulation. In the hearing, he said the outer walls were insulated but not the interior walls. I find insulating interior walls is not a normal requirement in the building code. I dismiss this portion of his claim.

In respect to the mouse problem, I find the weight of the evidence is that the landlord responded by sending a Pest Control person once and advising the clients on keeping a tidy home and putting away food. However, I find the tenant's evidence credible that he called the receptionist of the landlord at the number provided to complain of the continuing mouse problem. Although the landlord said he never got the message, I find one visit by a Pest Control person is not an adequate response to a reported mouse problem. I find follow up visits would be expected to see if the treatment is effective and the house meets hygiene standards. On the other hand, I find the tenants did not do everything they should to minimize the problem as the Pest Control person found food sitting on tables and much clutter so I find the tenant contributed to the problem. I find the tenant entitled to some compensation for the landlord's neglect to adequately address the mouse problem.

Regarding the mold in the bathroom, I find the tenant provided insufficient evidence to support his claim and the onus is on him to prove his claim. The landlord said it was

found adequate on the inspection report with the tenant although he said there was some problem with the kitchen exhaust fan. I dismiss this portion of his claim.

In summary, I find the fire escape issue caused stress and anxiety to the tenants and this was caused by the landlord renting a suite not in conformance with City standards contrary to section 32 of the Act. I find the landlord's response to the mouse control issue was inadequate. Due to landlord act or neglect on these two issues, I find the tenant entitled to some compensation. While the unit was made uncomfortable, the tenants did have a reasonably habitable place to live and wash and cook so I find the claim of a refund of half a month's rent for the time they lived there is excessive. I find them entitled to a refund of 10% of their rent for 8 months as compensation for the landlord's neglect of the two issues noted above. I find them entitled to a refund of \$1080.00 and a monetary order is issued for this amount.

I find the tenant has not served the landlord with his forwarding address in writing and is declining to do so. Therefore, I find his application for the refund of his security deposit is premature and I dismiss this portion of his claim with leave to reapply when and if he complies with the requirements of section 38 of the Act regarding his forwarding address.

Conclusion:

I find the tenant is entitled to a monetary order for \$1180 which includes recovery of his filing fee. I dismiss the application of the tenant for the refund of his security deposit as it is premature and I give him 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: May 17, 2017

Residential Tenancy Branch