



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O RP RR FF

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 requiring the landlord to comply with the *Act* pursuant to section 62; an order that the landlord make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss?
Are the tenants entitled to an order requiring the landlord to comply with the *Act*?
Are the tenants entitled to an order that the landlord make repairs to the rental unit?
Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs?
Are the tenants entitled to authorization to recover the filing fee for this application?

Background and Evidence

This tenancy began on July 7, 2016 as a one year fixed term tenancy. A copy of the residential tenancy agreement was submitted as evidence showing a \$3,600.00 monthly rent amount payable on the first of each month. The landlord continues to hold an \$1800.00 security deposit paid by the tenant at the outset of the tenancy as well as a \$300.00 pet damage deposit. The tenant and his co-tenant continue to reside in the rental unit as of the date of this hearing.

The tenant said that the landlord required three months' rent in advance in cash and that he withdrew savings money in order to secure the rental unit. He testified that he has never rented before. In his application for dispute resolution, the tenant stated that the landlord does not do anything but collect the rent and threaten to evict the tenant if the tenant requests repairs for the rental unit.

The tenant testified that there is a property manager on site and, as a result many of the items he had previously complained about have been resolved. Specifically, the tenant testified that;

- The property manager fixed the exterior faucets as, prior to the property manager fixing the faucets he was not able to wash his cars.
- The property manager cleaned up a felled tree cut into logs in the yard as he could not enjoy his yard previously: the logs were in his way.
- The property manager fixed the washer and dryer and they now work – before, they did not work.
- The property manager had the gutters cleaned – prior to that, the gutters were dirty.

The tenant testified that some of the above issues caused him loss before they were addressed. He testified that the gutters were above his car and his car is a convertible and therefore when the car was parked, items from the gutter would fall into his car. He estimated his damages to his car at approximately \$450.00. The tenant testified that his inability to wash his 2 cars in the driveway at his home meant that he had to take his cars to the carwash on a regular basis at a cost of \$30.00 per trip for both cars.

The tenant testified that he had to attend to a laundromat when the dryer did not work. He also testified that some of his clothes were damaged (ripped) by the dysfunctional dryer. He estimated his loss as a result of the malfunctioning machine at approximately \$1000.00. The tenant testified that he acknowledged the dryer was old that he initially attempted to repair himself. He testified that, when he asked the landlord to fix the dryer, it was replaced.

The tenant testified that the landscaping at the property had generally not been maintained and there are weeds in the yard. The tenant testified that he and his co-tenant/spouse spent a great deal of time weeding the yard and that they had to take time off to weed the yard. As well, he testified that he could not have its full use to have a picnic because of the logs in the way. The tenant noted that he and his co-tenant had moved the logs off to the side of the yard. He also confirmed that the property manager has now made the yard more accessible. The tenant estimated that he and his co-tenant should be compensated approximately \$800.00 for their time and labour.

The tenant testified that there are some substantial repair issues yet to be addressed. The tenant testified that, after moving into the rental property and being told by the landlord that he did not have a key for the basement/crawlspace the tenant crawled under the house to determine if he could use the area for storage. The tenant testified that when he went under the house, he observed a crack in the foundation of the home.

The tenant testified that, probably related to the foundation issues at the residence, some of the cobblestones on the front entranceway are askew. He testified that his mother almost tripped on the cobblestones the other day. He estimates that the cobblestones will be approximately \$10,000.00 to fix. He estimated that the foundation itself requires about \$20,000.00 to fix. The tenant testified that there is also beam within the house that is collapsing. He sought compensation for the cost of an engineering report because the landlords have not done anything about this issue.

The tenant described exposed wire in the front entranceway of the house. He testified that he believes it is a danger. The landlord's representative testified that the wire is a cable wire and not dangerous however the landlord's representative made assurances that he would have the matter investigated immediately and report the results to the tenant. The tenant testified that there is a silverfish (pest) problem within the rental unit. He acknowledged that the property manager had educated him about how to address these types of pests and that the property manager had provided sticky pads to help eradicate the pests.

The landlord's representative provided undisputed testimony that he has continually worked to address any issues raised by the tenant. The landlord assured the tenant that he will continue to address the needs of the tenant with respect to necessary repairs. The landlord's representative also argued that some of these issues are not emergency repairs or repairs at all but upgrades or changes to the rental unit requested by the tenant. The landlord's representative testified that he believes the tenants' motivation for seeking a rent increase or monetary award is that he requires money towards the rent. The landlord's representative testified that the tenant has been late often and recently he has not paid the full rental amount each month. The landlord's representative testified that, regardless of rent payment status, the landlord's representative will continue to make all reasonable repair requests.

Analysis

Section 67 of the Act requires a claimant seeking a monetary amount to prove that he has incurred loss, that the loss is the result of action or inaction by the other party and to

provide evidence to support his claim. In this case, the tenant submitted confirmed that many of his original repair requests have now been addressed by the landlord's representative (property manager).

The landlord's representative argued that the tenant's claims that he has suffered loss as a result of the lack of "repairs" to the unit are unfounded and exaggerated. He testified that he has met the tenant's request even when the repairs or changes were not necessary. He testified that the larger items the tenant has referred to, including an unsecure beam, a cracked foundation and a crooked cobblestone on a pathway are not items that the landlord can be reasonably expected to undertake at the request of the tenant.

The tenant sought an amount to reflect damage to his vehicle because he parked underneath the gutters and damaged his vehicle. When asked, the landlord cleaned the gutters. Based on the description of the property and the photographs, the tenant could have parked elsewhere. The tenant could have put the convertible top up on his car thereby protecting it from falling objects. The tenant did not submit a receipt or estimate regarding damage to his car. Therefore, given the lack of evidence and mitigation by the tenant, I find that the tenant is not entitled to the cost of any damage to his vehicle. Furthermore, I find that the tools for car-washing (an outdoor hose) are not a primary part of most tenancies. Car washing was not an item that was specifically raised prior to moving in to the rental unit by the tenant. Therefore, I find the landlord is not required to compensate the tenant for his carwashes.

The tenant did not provide sufficient evidence to indicate that the clothes dryer within the residence was broken for any extended period of time nor did he provide evidence that his clothes were damaged. Therefore, I find that the tenant is not entitled to be compensated for his clothes or any trip to the laundromat or drycleaner.

The tenant did not provide a copy of his residential tenancy agreement. The landlord and tenant did not agree on the expectations for landscaping at the rental property. I note that Residential Tenancy Policy Guideline No. 1, as provided below, states that a tenant is generally responsible for routine yard maintenance including but not limited to weeding, gardening and cutting the grass unless otherwise agreed between the parties. The landlord will be responsible for major projects including tree cutting. Based on the evidence before me, there is no additional agreement between the parties regarding property maintenance and so the standard terms would apply. Based on the testimony and photographic evidence, I find that tenant picnicking on the lawn was not prohibited by the position of the logs. Therefore, the tenant is not entitled to recover the cost of his time for landscaping or weeding at the rental home.

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property...
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.
3. Generally **the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow.** The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
4. Generally **the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.**
5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
6. The landlord is responsible for cutting grass, shoveling snow and weeding flower beds and gardens of multi-unit residential complexes ...

[emphasis added]

The tenant testified that there is a crack in the foundation of the home. The tenant did not prove that this crack is significant to health or safety. Nor did the tenant explain the nature of the impact on him of the crack in the foundation besides that he believes the house is slightly tilted as a result. Given the lack of evidence that the crack discovered by the tenant is of any consequence, given the magnitude of the job if the crack was repaired and given that the tenant accepted the condition of the rental unit on move-in, the repair of the foundation is not something that the tenant is entitled to in these circumstances. Therefore, I find the tenant is not entitled to \$20,000.00 he sought to repair the crack in the foundation.

For the same reasons provided above regarding crack, the tenant is not entitled to compensation for the beam within the house that he claims is collapsing. The tenant did not pay for an engineering report nor is it appropriate for the tenant to do so. The tenant sought compensation for an engineering report but he is not entitled to compensation.

The tenant testified that the cobblestones on the front entranceway are askew. The landlord's representative testified that he would repair these after investigation if that were the case. The photographs indicate that the pathway is very old, as is the home. I accept the testimony of the landlord's representative that the cobblestones are in the same condition as when the tenant viewed the residence. As the tenant has not

identified any consequences or impact on the tenant or his guests, beyond that his mother almost tripped on one of the stones. Therefore, I find that the tenant is not entitled to compensation for the askew cobblestones.

I accept the testimony of the landlord that he will advise the tenant of any issue with the exposed wire or cable after investigation. The landlord testified that he will provide this information and any changes or repairs necessary by July 15, 2017. The nature of the wire or cable is unknown and it has not caused any harm, however it has been an eyesore. I find that the tenant provided insufficient evidence to show that the cable/eyesore has caused compensable loss. In all of the circumstances of this tenancy, I find that the tenant is not entitled to compensation for the exposed wire.

Based on all of the evidence and testimony at this hearing, I find that the tenant is not entitled to compensation pursuant to section 67 of the Act. I dismiss the tenant's application in its entirety and, as the tenant was unsuccessful in his application, I find that the tenant is not entitled to recover his filing fee.

As I accept that the landlord's representative will address any of the issues raised by the tenant that require further investigation, I find that the tenant is not entitled to an order that the landlord make certain repairs. I find that there are no issues that the tenant has identified that warrant such an order.

Conclusion

I dismiss the tenant's application in its entirety.

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: July 6, 2017

Residential Tenancy Branch