



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding CENTURY 21 AMOS REALTY & PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to perform repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's three agents, landlord BA ("landlord"), "landlord HL" and "landlord KD" and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. "Witness CH" testified at this hearing on behalf of the landlord and both parties had equal opportunities to question the witness. This hearing lasted approximately 127 minutes, in order to allow both parties to fully present their submissions.

The landlord confirmed that he was the owner and managing broker of the landlord company named in this application and that he had authority to speak on its behalf at this hearing. The landlord confirmed that landlord HL was his administrative assistant and she had authority to speak on behalf of the landlord company at this hearing. The landlord confirmed that landlord KD would not testify at this hearing because he was in training and observing only.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

I did not receive a copy of the landlord's written evidence package of 33 pages prior to the hearing. The landlord confirmed that he faxed it to the Residential Tenancy Branch ("RTB") on July 24, 2017. The tenant confirmed that she received and reviewed this evidence from the landlord. I asked the landlord to re-send a copy of the written evidence to me by way of facsimile at the RTB after the hearing with the tenant's consent. I received the landlord's written evidence package on August 3, 2017, after the hearing concluded, and considered it at the hearing and in decision, as per the tenant's consent.

The tenant did not provide testimony regarding the “other” remedies sought in this application. Accordingly, this portion of the tenant’s application is dismissed without leave to reapply.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to perform repairs to the rental unit?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness CH, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 15, 2016. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. The rental unit is a log house that is situated on a ten-acre rural property in the middle of the forest.

Both parties agreed that they attended a “previous hearing” before a different Arbitrator at the RTB on April 3, 2017. A decision and repair order were issued on April 10, 2017, following the hearing. The file number for that hearing appears on the front page of this decision. Both parties provided a partial copy of the repair order made at the previous hearing.

The tenant claimed that the landlord did not complete all of the required repairs ordered at the previous hearing by May 31, 2017 and she seeks a future rent reduction of \$150.00 per month until all of the repairs are completed. She said that there is still debris on the west deck, under the crawl space and in the yard that the landlord failed to clear. She claimed that pest control still had to be done because a mouse trap was deactivated in the crawl space of the rental unit and there is a carpet beetle issue that she had to pay \$131.25 to treat and expects reimbursement from the landlord. She maintained that not all of the rotten boards were replaced on the deck. She explained that the oven light was replaced by the landlord but it still was not working. She stated that light bulbs still needed to be replaced in the rental unit and that window and door screens were not all installed or functional.

The landlord testified that all required repairs were completed. He stated that there was a delay because one of the workers fell ill and could not work for some time. He provided invoices to show the work done. He claimed that the debris was removed, the lightbulbs were replaced, and the tenant did not notify him that the oven light was not functioning after replacement. He claimed that he hired witness CH to complete many of the repairs.

Witness CH testified that he completed the required repairs requested by the landlord and that he walked through the entire rental unit with the tenant, who claimed the repairs were sufficient. Witness CH testified that he replaced only the old boards on the deck, that he secured the railing, that he installed the lightbulbs for the chandelier, that he repaired one of the patio sliding doors and the tenant confirmed that the screen was functional, and that the other patio sliding door could not have a screen because of the portable air conditioning unit installed by the tenant. The tenant said that two patio doors did not have screens but provided unclear evidence as to where the doors were located. Witness CH confirmed that the kitchen window screen was functional because the tenant said that it was okay even though it had a "kink" in it, since no bugs were entering through the screen. Witness CH also testified that he was last at the rental unit in mid-June when he saw debris being taken away and that he did not notice any insects at the property on the kitchen floor when he was replacing the light bulb.

The landlord testified that pest control was completed for mice in the rental unit. He provided a letter, dated June 8, 2017, from a pest control technician who completed multiple inspections and treatments, who indicated that the tenant refused treatment inside the rental unit except for the crawl space. The tenant agreed that she refused treatment inside because of the danger to her dogs. The letter indicates that treatment was permitted outside as per the tenant and was completed there.

The landlord provided another letter, dated July 13, 2017, from the same pest control technician who stated that only ants and mice were mentioned as problems by the tenant, that there was no mention of carpet beetles, that outside ant treatment was completed, and that no carpet beetles could be seen. The landlord claimed that because the tenant lives in a log cabin, the unit is not sealed off, and pests are expected because of the location of the property.

The tenant seeks a past rent reduction of \$150.00 per month for three months for a total of \$450.00. She said that she suffered a loss of quiet enjoyment because there are free range cattle around the property, which restricts her access because they are so close to the rental unit and they defecate in the area as well. She provided photographs of the area showing the cattle. She requested that the landlord install a cattle guard and fence to keep the cattle away from the property.

The landlord said that the property is surrounded on two sides by Crown lands, that the owner did not intend to install a fence because it would restrict all wildlife in the area, that the tenant accepted the free movement of wildlife by agreeing to live in such a rural property otherwise called the "bush," and that this was not an urban area so free range cattle were to be expected. He said that the cattle come seasonally between April and May, so it is only a period of about 45 days where they are moving around. He claimed that the cost for installing a cattle guard is about \$4,000.00 to \$5,000.00 and the cost for fencing was more than \$20,000.00. He said that there have been no complaints in the last eight years regarding the cattle around the property.

Analysis

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Past Rent Reduction

I dismiss the tenant's claim for a past rent reduction of \$450.00, without leave to reapply. I find that the tenant failed to justify the amount of \$150.00 per month that was being claimed for three months. I find that the cattle issue is a temporary inconvenience for the tenant and is part of rural, rather than urban living. I accept the landlord's evidence that prior to renting the unit, the tenant inspected the property, had a chance to ask questions, and agreed to the positive and negative aspects of living in a forested area.

I accept the landlord's evidence that the extraordinary costs of installing a cattle guard and fencing at the property, which is bordered by Crown lands, for approximately \$25,000.00 is not reasonable, feasible or required as no other residents have filed complaints and this is a temporary, seasonal issue. Therefore, I make no orders for the landlord to install a cattle guard or fencing at the property.

Repairs and Future Rent Reduction

I order the landlord, at its own cost, to replace the oven bulb at the rental unit by August 30, 2017. The tenant reported that the replacement bulb is not functioning.

I order the landlord, at its own cost, to have a certified, licensed pest control technician inspect the entire rental unit by August 30, 2017. If the technician recommends that pest control treatment be completed in the rental unit, I order the landlord to abide by that recommendation by September 15, 2017. If the tenant refuses this recommended pest control treatment, the landlord will not be obligated to complete it; in that case, the tenant will be responsible to pay the cost of the technician's invoice for the inspection and time at the rental unit.

I order the landlord, at its own cost, to reactivate the traps and bait for the mice in the crawl space of the rental unit by August 30, 2017, because the tenant said that it was deactivated.

I dismiss the remainder of the tenant's claim for repairs to be done at the rental unit. I find that the tenant failed to provide sufficient evidence that repairs are required beyond what has already been repaired. I accept the evidence of the landlord and witness CH that the rental unit was inspected and the repairs ordered at the previous hearing were adequately completed and I find that the timeline for completion was not unreasonable given the unforeseen circumstances of illness for one of the workers.

I dismiss the tenant's claim for a future rent reduction of \$150.00 per month until the previous hearing repairs are completed, without leave to reapply. As noted above, I have ordered limited repairs to be completed. I accept the landlord's evidence that he was not notified that the newly replaced oven bulb was not working and therefore, he could not have completed another replacement without knowing. I also find that the landlord was unaware that the traps and bait in the crawl space were deactivated so he could not have them reactivated without knowing. I further find that the landlord made reasonable efforts to complete previous pest control inspections and treatment in the rental unit and he still has this obligation but the tenant has also refused some treatment inside the rental unit because of her dogs.

Other Costs

I order the landlord to reimburse the tenant for the costs of pest control in the amount of \$131.25. The tenant provided an invoice, dated July 6, 2017, for this cost. While witness CH testified that he did not see any pests in June 2017, he is not a certified pest control technician and he was completing other repairs in the unit about a month before the tenant had a pest control technician come in July 2017 to complete treatment for carpet beetles. The landlord is responsible for pest control in the rental unit. Although the landlord provided a letter from a pest control technician on July 13, 2017 indicating he did not see any carpet beetles previously, the technician did not respond to the tenant's report of carpet beetles because the landlord instructed him not to, so he did not observe the rental unit after June 2017.

I note that the "tenant must maintain reasonable health, cleanliness and sanitary standards" at the rental unit, as per section 32 of the *Act*; the tenant has dogs inside the rental unit and has refused pest control treatments inside the rental unit because of her dogs. If the tenant continues to refuse pest control treatments in the future, she may be responsible for such costs in the future.

I dismiss the tenant's claims for mail costs of \$11.34, photo evidence of \$17.00 and photo evidence of \$16.39, without leave to reapply. During the hearing, I notified both parties that the only hearing-related costs that the tenant is entitled to under section 72 of the *Act*, is for filing fees.

As the tenant was mainly unsuccessful in this application, I find that the tenant is not entitled to recover the \$100.00 application filing fee from the landlord.

Conclusion

I order the landlord, at its own cost, to replace the oven bulb at the rental unit by August 30, 2017.

I order the landlord, at its own cost, to have a certified, licensed pest control technician inspect the entire rental unit by August 30, 2017. If the technician recommends that pest control treatment be completed in the rental unit, I order the landlord to abide by that recommendation by September 15, 2017. If the tenant refuses this recommended pest control treatment at the rental unit, the landlord will not be obligated to complete it. In that case, the tenant will be responsible to pay the cost of the technician's invoice for the inspection and time at the rental unit.

I order the landlord, at its own cost, to reactivate the traps and bait for the mice in the crawl space of the rental unit by August 30, 2017.

I order the tenant to deduct \$131.25 from her future rent payable to the landlord for this tenancy, in full satisfaction of the monetary award made in this decision.

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: August 11, 2017

Residential Tenancy Branch