



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for emergency and other repairs - Section 32;
4. An Order for the provision on services and facilities - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Landlord did not attend the reconvened hearing. It is noted that the Landlord attended the initial hearing that was adjourned due to insufficient time. The Landlord was informed at the initial hearing that it would be receiving an Interim Decision and was sent this Interim Decision dated August 22, 2017 including a notice of reconvened hearing. The Landlord was informed at the initial hearing that the Landlord was to attend at the reconvened hearing as set out on the notice of reconvened hearing, and that a failure to attend would result in a decision being made on the basis of the evidence of the Party in attendance at the hearing. The Tenant was given full opportunity under oath to be heard, to present evidence and to make submissions at this reconvened hearing.

At the initial hearing the Tenant stated at the onset of the initial hearing that no emergency repairs were required. The Tenant was also unsure what services and facilities the Tenant was seeking the provision of other than parking.

Issue(s) to be Decided

Is the Tenant entitled to repairs or the provision of parking?

Is the Tenant entitled to an order for the Landlord's compliance?

Is the Tenant entitled to compensation?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence Provided at Initial Hearing

The Parties gave agreed evidence of the terms of the tenancy as follows: The tenancy started on October 1, 2016 on a fixed term to end September 30, 2017; rent of \$3,250.00 is payable on the first day of each month; and at the outset of the tenancy the Landlord collected \$1,625.00 as a security deposit.

The Tenant stated that at the outset of the tenancy the Landlord told the Tenants that they would be provided 2 parking spots with the rent. The Tenant states that they were only provided with one decal for parking and that on occasion no parking was available to the Tenants as they were not given a specific parking spot, only a designated parking area that would sometimes be filled. The Tenant claims \$50.00 per month in compensation for the loss of parking. The Landlord stated that the parking was provided as a courtesy and only on a first come, first served basis.

The Tenant stated that while the Tenant inspected the unit with the Landlord at the onset of the tenancy, the Landlord only took notes and did not provide a copy of any condition report to the Tenant to view or sign. The Tenant states that no copy of a condition report was subsequently provided to the Tenant. The Landlord agreed that the Tenant was not given any copy of an inspection report at the time of the move-in inspection and stated that that Tenant was given opportunity to follow up and inform the Landlord of any issues. The Landlord does not know if the Tenant was provided a copy of a condition report at move-in. The Tenant seeks the Landlord's compliance in providing a copy of the move-in inspection to the Tenant.

The Tenant provided a long list of repairs and the Landlord gave evidence in response to the Tenant claims for these repairs. The Tenant stated that minor deficiencies were repaired. The Landlord stated that at the end of June 2017 the Landlord conducted an inspection for the final

repairs. The Landlord states that it has no evidence as to why these repairs were not done prior to June 2017. The Landlord stated that repairs were made to the water tank.

The hearing time then ran out and an adjournment was considered in order to hear the Tenant's last claim for compensation. At this point the Tenant stated that they expected to move out of the unit on September 30, 2017. The Parties confirmed that the tenancy agreement provided that the Tenants are required to move out of the unit at the end of the fixed term. The Landlord confirmed that the tenancy would not be renewed.

Background and Evidence Provided at reconvened Hearing

The Tenant confirms that the tenancy has ended and states that the security deposit has been dealt with.

The Tenant states that there was leaking into the sunroom from the onset of the tenancy and that this leak was immediately reported to the Landlord who attended to make repairs. The Tenant states that the repairs were insufficient and the leaking continued to the end of the tenancy without sufficient repairs ever made. The Tenant states that as a result of the leaking the Tenants lost use of the sunroom. The Tenant claims \$444.60 per month to the end of the tenancy calculated as a percentage of the rent based on the square footage of the sunroom.

The Tenant states that from the onset of the tenancy there were deficiencies that were noted by the Tenants after they moved into the unit. The Tenant states that the Landlord was informed of these deficiencies and only repaired the minor items. The Tenant states that the hot water tank was leaking on and off until it was completely broken and finally repaired in November 2016. The Tenant states that the central vac never worked throughout the tenancy. The Tenant states that the toilet in the master bedroom would not flush and was not repaired before the end of the tenancy. The Tenant states that the Landlord failed to remedy the remaining deficiencies.

These deficiencies were pointed out at the initial hearing and the Tenant confirms the remaining deficiencies that were pointed out at the initial hearing again as follows:

holes on walls, damaged skylights, missing door stop, missing sink stopper, damaged kitchen counters, broken ice and water dispenser and shelves in fridge, broken kitchen window, missing kitchen door, damaged sliding windows in the master bedroom and living room, warped inner door that would not close, cracks on the master bedroom ceiling, missing horizontal blinds,

cracked bathroom tiles, bubbled paint in the bathroom/powder room. The Tenant claims a loss of the value of the tenancy in the amount of \$250.00 per month to the end of the tenancy.

Although the application only claims monthly amounts to the end of June 2017 as the matter was adjourned the Tenant argues that it would be reasonably anticipated that the monthly amount would continue to be claimed to the end of the tenancy.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Since there were no emergency repairs I dismissed this claim at the initial hearing. As the tenancy was to end very shortly and as none of the repairs or parking issues were vital to the remaining term of the tenancy I also dismissed the claim for repairs to the unit and the claim for the provision of services and facilities. As the tenancy ended, as the security deposit has been dealt with and as the claim for a move-in report is relevant to the return of the security deposit, I dismiss the claim for the Landlord's compliance in relation to providing a copy of that report to the Tenants.

It appears that the failure of the Landlord to properly conduct a move-in inspection with the mutual involvement of the Tenant is what led to the claim for compensation in relation to deficiencies. Based on the undisputed evidence of the Tenant I accept the implication that the Tenants never agreed to pay the amount of rent asked for with the deficiencies discovered at the onset of the tenancy. Based on the evidence of deficiencies and the Landlord's evidence that no repairs were made prior to June 2017, I find that the Tenant has substantiated a loss of the use of the sunroom in the amount of \$444.60 per month from the onset of the tenancy.

As it would be reasonable due to the adjournment to accept an amended claim to the end of the tenancy but as the Tenant's claims for repairs were dismissed at the previous hearing held in August 2017 and, I find that the Tenant is only entitled to compensation to the end of August 2017 in the amount of **\$4,890.60** (444.60 x 11 months). For the above reasons I also find that the Tenant suffered a loss, albeit mostly cosmetic, in the value of the tenancy due to the remaining deficiencies and given the undisputed amount claimed I find that the Tenant is

entitled to compensation of \$250.00 per month to the end of August 2017 in the total amount of **\$2,750.00** (250.00 x 11).

As there is no evidence that the written tenancy agreement provides for any parking and as the Tenant's oral evidence of the promise of parking is disputed by the Landlord's oral evidence of courtesy parking only I find on a balance of probabilities that no parking was guaranteed to the Tenants. I therefore dismiss the claim for parking compensation.

As the Tenant's claim has met with substantial success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$7,640.60**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$7,640.60**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 16, 2017

Residential Tenancy Branch