



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDCT, PSF, RP, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$7860
- b. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- c. A repair order
- d. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on December 23, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order that the landlord provides services or facilities required by the tenancy agreement or law?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy was supposed to start on October 1, 2017. However, the rental unit was not ready and the tenants did not move in until October 7, 2017. The tenancy agreement is in writing and is for a fixed term ending on September 30, 2019. The rent is \$2620 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1310 at the start of the tenancy. The rental unit has two bedrooms, two bathrooms and is about 800 square feet.

The tenants seek compensation for the reduced value of the tenancy caused by the following:

- A non functioning drain in the sink caused by a defective garburator. This problem existed at the start of the tenancy and the garburator was removed on December 3, 2017.
- A non functioning dishwasher which was not working at the start of the tenancy and finally replaced on January 24, 2018. A defective dishwasher was taken out on November 21, 2017 and left in the rental unit for several weeks before being removed. Further, a shelving unit was taken out to facilitate access to the dishwasher and it has not yet been reinstalled.
- A non functioning stove that had not been replaced by the time of the hearing. The landlord testified that it is scheduled to be removed on February 17, 2018.

The tenants submit the delays have been unreasonable. They testified they or other family members have made themselves available to the landlord to enable the landlord or his agents and contractors to gain access on 15 occasions over the last 4 months.

The landlord testified it has been difficult getting new appliances because they are high end appliances and must be purchased from overseas. The landlord further testified the tenants failed to cooperate with them. Finally, the landlord testified the tenants accepted the payment of \$591 at the start of the tenancy to compensate them for the problems with the appliances.

The Law:

Landlord and tenant obligations to repair and maintain

- 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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #6 includes the following:

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Analysis:

After carefully considering all of the evidence I have come to the following determinations:

I determined the problems with the sink drainage (including the garburator), the lack of a functioning dishwasher and a functioning stove amount to a significant reduction in the value of the tenancy and the tenants are entitled to compensation. I accept the landlord's evidence that the appliances are high end and unique and were difficult to replace. However, the fact remains the tenants were deprived on the use of these items for a significant period of time.

I do not accept the evidence and submission of the landlord that the payment of the \$591 in early October was to compensate the Tenants for these problems. The explanation of the Tenants that it was to compensate them for the failure of the landlord to have the rental unit ready for October 1, 2017 is a more plausible explanation.

Further the landlord failed to present sufficient evidence to establish that tenant released and discharged the landlord from their right to make these claims.

I do not accept the testimony of the landlord that the tenants failed to accommodate the landlord's efforts to fix the problems. They made themselves or other family members available to give the landlord access on over 15 occasions. The landlord did not present sufficient evidence that the tenants delayed the landlord's efforts to make the repairs.

The garburator was removed on December 3, 2017. The tenants testified they have not interest in having a replacing garburator. No repair order is required on this item. The dishwasher was replaced on January 24, 2018. However, the shelving unit has not been re-installed. The stove is still defective although the landlord testified it is scheduled to be replaced by February 17, 2018.

Repair Order:

I determined it was appropriate to make the following repair order. I ordered the landlord to do the following:

- a. Reinstall the shelving above the dishwasher.
- b. Replace the stove.

I further order that the work be completed by February 28, 2018.

Monetary Order:

The tenants seek compensation in the sum of \$7860 for reimbursement of 3 months rent. The tenants failed to break down their claim. I determined the amount claimed is not supported by the evidence and is unreasonable.

With respect to each of the tenant's claims I find as follows:

- a. I determined the tenants are entitled to the sum of \$300 in compensation for the reduced value of the tenancy the problems relating to sink drainage and the defective garburator for the period October 7, 2017 to December 3, 2017. This was for just under 2 months and was a reduction in the enjoyment of this high end rental unit.
- b. The dishwasher was not functioning for the period October 7, 2017 to January 24, 2018. The enjoyment of the rental unit was reduced significantly for several weeks when the dishwasher was taken out but not

removed. The shelving unit above the dishwasher has yet to be re-installed. I determined the tenants are entitled to \$1100 in compensation for this matter.

- c. The tenants have been without a functioning stove from October 7, 2017 to the date of the hearing which is approximately 4 ¼ months. This is a significant loss of use of the rental unit. I determined the tenants are entitled to \$1700 for this claim.

The above award includes compensation to the tenants for the disruption to their enjoyment of the rental unit to accommodate the landlord and its contractors.

Conclusion

I ordered that the landlord replace the stove and re-install the shelving unit by February 28, 2018. I further ordered the landlord(s) to pay to the tenant the sum of \$3100 plus the sum of \$100 in respect of the filing fee for a total of \$3200 such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: February 16, 2018

Residential Tenancy Branch