



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *ERP, RR, MNDC, OLC, RP, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order directing the landlord to carry out emergency repairs and comply with the *Act*. The tenant also applied for a rent reduction, for compensation and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant stated that she had not served the landlord with a copy of her evidence and accordingly the tenant's evidence was not used in the making of this decision. The landlord testified that she did not file any evidence of her own. Both parties gave affirmed testimony.

The tenant informed me that the repair work she was seeking was in progress and that her application for an order directing the landlord to carry out repairs was moot. The tenant stated that at this time she was only seeking compensation from the landlord by way of a rent reduction for the loss of the bedroom that she was unable to use.

Issues to be decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on October 01, 2017. The tenant moved in prior to the start of tenancy, on September 16, 2017. Rent is \$1,600.00 due on the first of each month. The rental unit is a two bedroom suite located in the basement of the house. The occupant of the upper level rents the entire house from the owner and has permission to rent out the basement.

The tenant pays rent to the landlord named in her application who in turn pays the property management company that is hired by the owner to manage and take care of the rental property.

The tenant testified that from the date she moved in she noticed that the wall in one of the bedrooms was mouldy and that the carpet had an offensive odour. The tenant reported it to the landlord who in turn reported it to the property management company.

On September 27, 2017, the wall was treated with a solution and painted over. The tenant stated that the work was not done to her satisfaction as the odour was still prevalent after the work was complete. A few inspections were conducted by the property management company and it was determined that there was a drainage issue which resulted in water seeping through the bedroom wall. The local municipality was also involved.

As part of the restoration of the bedroom, the carpet was removed and the wall was stripped. The tenant testified that the landlord provided her with hotel accommodation for two nights while this work was ongoing. The tenant stated that at the time of the hearing, the room had not been restored as the owner was waiting for final confirmation from the municipal office that the drainage problem had been resolved.

Both parties agreed that the bedroom was unfit to be used by the tenant starting October 27, 2017. Both parties also agreed that the bedroom is approximately one fifth of the total square footage of the home. The tenant is seeking compensation for the loss of use of the bedroom.

Analysis

Section 32 of the *Residential Tenancy Act*, addresses landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that the landlord fulfilled her obligations by acting on the complaints she received, in a timely manner. The landlord determined the cause of the mould and made efforts to rectify it. The landlord also made the necessary arrangements to treat and paint the affected wall of the bedroom and provide the tenant with hotel accommodation when necessary.

Based on the sworn testimony of both parties, I find that the tenant has not proven that the landlord failed to meet her obligations under the *Act* with regard to maintaining services and facilities that are essential to the tenant's use of the rental unit as living accommodation.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In this case, the landlord was simply carrying out her responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However in order to carry out this duty, the landlord inconvenienced the tenant by removing the bedroom carpet and stripping the bedroom wall thereby rendering the bedroom unsuitable for occupation. I find that this inconvenience to the tenant which included the loss of the use of the bedroom resulted in a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment of the rental unit with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or treating the mould that was prevalent inside the bedroom wall.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work and did lose the use of the bedroom from October 27, 2017. Therefore I find that the tenant is entitled to compensation. I must now determine the quantum of the damages that the tenant is entitled to.

Based on the description of the inconvenience suffered by the tenant since October 27, 2017 to date and also based on the size of the bedroom that was unavailable for occupation, I find it appropriate to award the tenant a rent reduction in the amount of \$350.00 per month for the months of November, December 2017, January and February 2018. in the total amount of \$1,400.00.

Since the tenant has proven her claim, I award the tenant \$100.00 towards the recovery of the filing fee.

Overall the tenant has established a claim of \$1,500.00. The tenant may make a one-time deduction of \$1,500.00 from rent for the month of March 2018. If the tenant does not regain full use of the bedroom by March 01, 2018, the tenant is at liberty to file an application for further compensation.

Conclusion

The tenant may make a one- time deduction of **\$1,500.00** off rent for March 2018.

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 14, 2018

Residential Tenancy Branch