



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

The tenant applies for compensation on the grounds that he was required to conduct emergency repairs to the rental unit at his cost and that the landlord failed to maintain the premises in reasonable condition, failing to properly supply a deck, a garage and one of the bedrooms during the tenancy.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord failed in his obligations to the tenant and has the tenant suffered loss as a result?

Background and Evidence

The rental unit is a four bedroom “plus den” house. The tenant took up occupancy of the lower, two bedroom suite in the home about three years ago. The landlord lived upstairs at that time. Sometime in mid 2016 the landlord moved away and the tenant began renting the entire home at a monthly rent of \$2400.00. He sublet the basement suite to a friend.

There is no written tenancy agreement. The landlord took no deposit money.

The tenant thought that he would live there for three years or so. However, in mid 2017, the landlord sold the premises. The tenant was given a two month Notice to End Tenancy and successfully applied to dispute it. Along with that application the tenant sought the same relief as he is requesting here, however the arbitrator hearing that first matter determined that the applications were unrelated and dismissed this portion of the tenant's claim, with leave to re-apply. This application therefore, is that re-application.

The landlord immediately issued a second two month Notice to End Tenancy after the first one was cancelled. The tenant applied to dispute it as well, but was unsuccessful. The landlord received an order of possession and this tenancy ended September 1, 2017.

The tenant testifies that when he began renting the whole house the landlord had agreed to effect certain repairs, particularly to a raised rear deck. The landlord did not do it.. Nor was exposed wiring and lighting attended to or flooring in the lower bathroom. The tenant says a toilet seat he repaired had a frozen or rusted nut or bolt that he had to saw off.

The tenant refers to a copy of a text message, said to have been sent to the landlord in September 2016, listing "things to be done in September." The list includes: "deck (down & up)", "Baseboards (down & up)", "floor transitions", "doors-various", "bathroom tile down", "window drapes up", "garage door", "dishwasher and stove vent down" and "dump run – various".

The text from the tenant goes on to say "I have booked ryan and grant this Saturday and made sure I don't have kids. Can you make sure we have what we need to do the deck,"

The tenant indicates that he commenced work on the deck but the landlord did not assist. He removed at least the handrails around the deck, which stands about twenty feet above the ground. Ultimately, in the spring of 2017 the municipality saw that the deck had no handrails (and no building permit) and ordered that it not be used as it was unsafe.

The tenant says he also installed lighting in the home. He provided pictures of his work and of the general problems. Unfortunately virtually none of the pictures were decipherable. The tenant had had them faxed into the Residential Tenancy Branch and

the faxed photos are of such reduced quality and in black and white, as to shed little light on their subjects.

The tenant also complains that the flooring for the bathroom on the lower level was simply painted plywood.

The tenant says he should be compensated for 100 hours of his work at the rate of \$80.00 per hour and that he should also be compensated for the lack of a deck, the unavailability of the garage and because one of the lower bedrooms could not reasonably be sublet because of its flooring.

The landlord testifies that he and the tenant were first introduced through his cousin. The tenant had been living elsewhere with his wife and two children until matrimonial difficulties caused them to part. The landlord offered him the basement suite and ultimately the whole house.

The landlord says he has installed 2000 square feet of flooring for the tenant throughout the whole upstairs. There was work to be done on the upstairs but the tenant was eager to take it over. Nothing "essential" needed to be done.

He says the tenant performed work at the tenant's discretion. The landlord compensated him when the tenant replaced a stove in the rental unit. The landlord bought paint and the tenant painted the downstairs.

Regarding the deck the landlord says the deck was fine at move-in. He and the tenant discussed an upgrade. The tenant wanted to start a deck refurbishing company, work on this deck and later use it to advertise the business. He says the tenant and Grant from down below started work on the deck without his permission. They had given the landlord a quote but it was too much money.

He says the tenant took the aluminum railing off to commence the project but stopped there. That railing which was damaged and could not be reinstalled, retained glass panels which were vulnerable to falling without a railing holding them, so the landlord removed the glass and posts, leaving the deck without any protection at its edge but for temporary railing made from 2x4 lumber.. He planned to recommence work in the spring, doing it himself at his own time and extending the deck as well.

He says he lowered the rent to \$2100.00 or \$1500.00 because the second bedroom in the lower portion could not be rented out.

He says he paid Grant to replace the baseboards the tenant complained about.

He says that he and the tenant got along and were agreeable about everything until they weren't. He didn't say when that happened but I infer it was when the landlord served the tenant with the first two month Notice to End Tenancy.

Regarding the garage, the landlord says that he reserved the garage to himself for storage and permitted the tenant to store items there as well.

In response the tenant says the landlord was to assist with the deck expansion. He quoted on the deck work but the landlord would not agree to pay. He admits to removing the railing, thinking the landlord was on his way over to start helping.

Analysis

When the tenancy started in the upper unit it was open ended, though a month to month tenancy. The tenant had no reason to assume his tenancy would not go on for years.

The parties were cooperative and agreeable. The tenant knew he was moving into a house that needed some work and he acquiesced to that, knowing that he could improve his home with his own work and that the landlord was of the same mind.

That changed when the landlord decided buy a place in another town and sell this one.

Unfortunately for the tenant, the law, the *Residential Tenancy Act*, permits a landlord in a month to month tenancy to give a two month Notice were his purchaser requests in writing that he do so. The only way a tenant can really protect himself is by negotiating a fixed term tenancy for a longer period.

In this case I cannot agree that any of the tenant's work was an "emergency" repair entitling him to undertake it without the landlord's prior approval. There was no item that he referred to that could be so classified.

While there may have been a general, friendly understanding between the parties, I find that the tenant has not shown there was an enforceable agreement between them for the landlord to do anything to the home by any given date. The text referred to is inconclusive whether it refers to a fixed agreement or a general understanding or even

about who is to do the work. The last line of the text would suggest it was the tenant who would attend to the deck. There is no documentation evincing the landlord's agreement to the arrangement.

It has not been shown that the full use of the garage was a term of the tenancy.

It was not shown that the tenant bargained for something more than the lower suite bedroom as it presented when he rented the premises.

Conclusion

In all the circumstances the tenant's application must be dismissed.

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: March 13, 2018

Residential Tenancy Branch