



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, LRE, RR, FFT

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order that the landlords make 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;
- an order suspending or setting conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlords with the application for dispute resolution and evidence by registered mail on February 24, 2018. The tenant provided two Canada Post tracking numbers as evidence of service. Pursuant to sections 88, 89 and 90 of the *Act* I find that the landlords were each deemed served with the tenant's application for dispute resolution on March 1, 2018, five days after mailing.

At the outset of the hearing the tenant testified that they have moved out of the rental unit and withdrew the portions of their application seeking an order that the landlord

comply with the Act, suspending the landlord's right to enter the rental unit and an order for repairs.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the reduced value of the tenancy arising from the landlords' failure to make repairs?

Is the tenant entitled to recover the filing fees for this application from the landlords?

Background and Evidence

The tenant provided undisputed evidence regarding the following issues. This tenancy began in December, 2017 and ended in April, 2018. The monthly rent was \$1,200.00 payable on the first of each month.

The rental unit is the basement suite of a detached home with the landlord residing in the adjoining unit. The tenant said that since moving in to the unit the landlords neglected to perform necessary repairs to the rental unit. The tenant submits that there were five major repair issues which were not dealt with in a reasonable period of time. The issues included:

1. Installing deadbolts and replacing the locks on the front door;
2. Heater under the kitchen sink requiring venting;
3. Fixing the lights and power in the bedroom;
4. Installing a missing refrigerator door handle; and
5. Installing a light switch plate in the dining room.

Two issues, repairs for the front door locks and the heater under the kitchen sink were not completed until February 16, 2018. The issue with lights in the bedroom malfunctioning was not resolved until a month after it was first reported by the tenant. The landlord did not attend to two issues which were outstanding at the end of the tenancy, a missing refrigerator door handle and issues with the dining room light switch plate.

In addition the tenant testified that the adjoining door between the rental unit and the landlord's suite was not in accordance with municipal standards and tenancy codes. The tenant said that the landlord entered the suite on multiple occasions without the tenant's prior knowledge or authorization. The tenant submits that she became aware of the intrusions because of footprints left in the rental unit.

The tenant seeks a monetary award in the amount of \$4,800.00 the equivalent of full rent for four months. The tenant said that even though she continued to reside in the rental unit throughout the tenancy she did not feel safe during that time. The tenant submits that the landlord did not fulfill their obligations under the tenancy agreement and the Act in providing a safe suite and therefore the tenant is entitled to a full reimbursement of rent.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

This section, in conjunction with section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

The tenant suggests that a monetary award in the amount of \$4,800.00, the equivalent of four month's rent is appropriate under the circumstances. The tenant submits that the enjoyment of a rental unit is a binary proposition and that because she did not have full enjoyment of the suite she is therefore entitled to a full reimbursement of rent.

I do not find the tenant's submission to be persuasive. Based on the evidence, including the tenant's undisputed testimony, the tenant had full use of the rental unit during the tenancy. There is no evidence that the tenant was unable to reside in the suite or that their use of the suite was seriously curtailed due to the need for repairs. I find the nature of the repairs requested by the tenant to have had some effect on their ability to enjoy the suite but not so much that it goes to the viability of the tenancy.

Furthermore, I find there is insufficient evidence that the landlord breached the Act by entering the rental unit without notification or authorization. The tenant's primary evidence in support of their claim is that they observed footprints in the suite and some items having shifted positions. I do not find the tenant's evidence to be persuasive or convincing. Photographs submitted into evidence of some discoloration on the floors are not sufficient to conclude that the landlord entered the rental unit without the

tenant's knowledge. I find the tenant's submissions have not met the evidentiary onus of showing on a balance of probabilities that there has been a breach by the landlord.

The tenant gave little evidence of the impact the need for repairs has had on the tenancy. The tenant did not provide testimony regarding whether she was unable to use certain rooms in the rental unit or that she curtailed any activities due to the need for repairs. The tenant gave evidence that she felt unsafe in the rental unit but I find that there is little evidence that the feeling resulted in any change in the tenant's activities.

Similarly, while the tenant submits that the adjoining door linking the rental unit to the landlord's suite caused her concern I find that there is insufficient evidence that the door was a violation of the Act, regulations or tenancy agreement. The tenant submits that the door contravenes municipal standards and the Act but I find that there is insufficient evidence in support of that conclusion. The tenant's photographs and interpretation of the legislative provisions is insufficient to conclude that there has been a breach by the landlord. Even if there has been a breach I find that there is little evidence there has been any damage or loss suffered beyond the tenant's submission that they felt general concern about safety.

The evidence submitted is that the tenant requested repairs for five major items in the rental unit. Two issues were conclusively resolved in February, 2018, approximately three months after the start of the tenancy. A third item was resolved a little over a month after first being reported. Two final items were not completed when the tenancy ended in April, 2018. Under the circumstances, I am issuing a monetary award which reflects that the tenant did suffer some loss in the value of the tenancy agreement. Based on the evidence before me I find that the loss was not significant, had no major impact on the tenant's daily routine and the tenant was able to occupy the rental unit throughout the tenancy. Based on the evidence I find that some of the issues were addressed and completed while there were other issues the tenant raised which were not resolved during the course of the tenancy. I find that the monetary award should reflect a portion of the monthly rent and a monetary award of \$100.00 to be appropriate. This reduction in the value of the tenancy equates to roughly 2% of the monthly rent the tenant was paying for each of the months of the tenancy. This award acknowledges that some issues were resolved during the tenancy while other issues remained.

As the tenants were partially successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$200.00

The tenant is provided with this Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 8, 2018

Residential Tenancy Branch