



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, RR, LA, RP, ERP, DRI, AAT, AS, MNDC, CNR

Introduction

On August 3, 2018, the Tenant applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following relief:

- to make emergency repairs to the rental unit.
- for an order that the Landlord make repairs to the rental unit.
- for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.
- to reduce rent for repairs, services, or facilities agreed upon but not provided.
- to suspend or set conditions on the Landlords right to enter the rental unit.
- for the Landlord to allow access to the unit or site for the Tenant and guests.
- for authorization to change the locks.
- to dispute a rent increase that is above the amount allowed by law.
- to be allowed to assign or sublet and the Landlords permission has been unreasonably withheld.

On August 7, 2018, the Tenant amended his application for dispute resolution to include the dispute of a 10 Day Notice to End Tenancy for Unpaid Rent dated August 4, 2018.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord testified that the Tenant paid the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

I find that the Tenants request to dispute the notice is successful and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 4, 2018, is set aside.

The Tenant's testimony was very confusing. The Tenant had a difficult time explaining his claims and needed continual reminders to stay on topic. The Tenant and Landlord were informed that I am not an advocate for either party and the parties have to testify and fully explain their claims and evidence.

Issues to be Decided

- Did the Landlord increase the rent in accordance with the legislation?
- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to deduct the cost of repairs, services, or facilities from the rent?
- Is the Tenant entitled to compensation for money owed or damage or loss?
- Should the Landlord's right to enter the rental unit be suspended or conditional?
- Is the Landlord restricting access to the rental unit?
- Should the locks to the rental unit be changed?
- Is the Landlord unreasonably withholding permission for the Tenant to assign or sublet the unit?

Background and Evidence

The parties testified that the tenancy began on November 15, 2017, on a one year fixed term basis. Rent in the amount of \$2,900.00 is due by the first day of each month. A security deposit of \$1,450.00 was paid by the Tenant to the Landlord. The Tenant provided a copy of the tenancy agreement.

Money Owed or Compensation for Damage or Loss

The Tenant is seeking compensation for the following items:

Electricity Repair in Kitchen	\$100.00
Main Washroom Repair	\$200.00
Abatement of Rent paid due to loss of use of part of the rental unit from October 2017 to June 15, 2018	\$8,900.00
Total	\$9,200.00

Rent Abatement / Rent Reduction

The Tenant is seeking compensation for a loss of value in the tenancy.

The Tenant testified that the tenancy was supposed to start on October 1, 2017; however, the Landlord delayed his move in and he did not move into the rental unit until November 15, 2017. The Tenant agreed to the change of the start date and did not pay the Landlord rent for the period between October 1, 2017 and November 15, 2017.

The Tenant testified that the tenancy agreement included the entire house and rental property. The Tenant testified that the house is a five bedroom and three bathroom house. The Tenant testified that the house has a self-contained one bedroom suite. The Tenant testified that he did not notice there was a one bedroom suite.

The Tenant testified that he understood that the tenancy agreement also included the garage.

The Tenant testified that he was blackmailed into signing the tenancy agreement on November 15, 2017. He testified that the tenancy agreement is silent that the Tenant is sharing the property with the occupant of the 1 bedroom suite.

The Tenant testified that the rental unit contained some of the Landlords possessions and that he lost the use of the rental unit for seven months. The Tenant testified that two of the bedrooms were furnished with tables, dressers, and beds. The Tenant testified that he wanted the bedrooms to be empty.

The Tenant testified that he asked the Landlord to remove the furniture from the bedrooms.

The Tenant provided a copy of text messages between the Tenant and the Landlord. A text message dated January 11 indicates that the Tenant said it was ok to give his phone number to a person interested in buying a bed.

The Tenant testified that the furniture was removed by the Landlord on June 16, 2018.

The Tenant provided a copy of text messages dated February 11; February 17; and March 15, asking the Landlord when the stuff in the garage will be moved.

In reply, the Landlord testified that the Tenant was aware that he was sharing the rental property with another Tenant. The Landlord testified that the Tenant came to look at the rental unit before signing the tenancy agreement. He testified that the Tenant met the other occupant and asked to share the internet with the other occupant.

The Landlord testified that the Tenant took possession of the rental unit knowing that the bedrooms were furnished. The Landlord testified that the Tenant was looking to purchase the furniture but the deal fell through. He testified that the Tenant was using the furniture because he was renting out the furnished rooms to people. The Landlord testified that he would have removed the furniture if the Tenant asked; and he did remove the furniture when the Tenant asked.

Repairs and Emergency Repairs

The Tenant testified that he had to deal with emergency repairs concerning the oven; bathroom, and electrical system. The Tenant testified that the oven would not turn off the electrical switch for the garburator was not working and the water in the shower was not working. The Tenant is also seeking to have the dishwasher repaired or replaced.

The Tenant testified that he sent a text message to the Landlord asking for the repairs. The Tenant testified that the Landlord said he would repair the items but he did not.

The Tenant testified that after ten days the Tenant replaced the oven at a cost of \$250.00.

The Tenant testified that on November 21, 2018, he called someone to fix the shower at a cost of approximately \$250.00. The Tenant did not provide an invoice or receipt. The Tenant provided a copy of a text message dated November 21 where he informs the Landlord that he had someone fix the tub. The Landlord responded by saying he was arranging for someone this week.

The Tenant testified that the electrical switch has not been repaired.

The Tenant testified that in January 2018 he notified the Landlord that the dishwasher was not working. He testified that the Landlord ignored him. When the Landlord had not repaired the dishwasher by June 2018, the Tenant asked the Landlord for compensation. The Tenant testified that the Landlord said he would attend to install a dishwasher in August; however, the installation has not been done. The Tenant provided a copy of text message dated April 18, 2018, which states "I have not heard from you since last month about the dishwasher". The Landlord responded that he was looking to see if it could be repaired or else he will look to get a new one. A copy of a text message dated May 2 indicates the Landlord provided the Tenant a phone number for an appliance repairman and asked him to arrange an inspection. A copy of a text message dated May 7 and May 18 indicates the Tenant asked the Landlord how to proceed with the dishwasher repair.

The Tenant provided a copy of an email dated July 27, 2018, that indicates the Landlord has a dishwasher in the shed and will get it installed when the Tenant is ready. The Tenant responded for the Landlord to fix the dishwasher on August 2.

In reply, the Landlord testified that on October 12, 2017, he received an email from the Tenant stating that the oven was not working. The Landlord testified that the following day he went to the rental unit to look at the oven and the Tenant refused him entry and called the police. The Landlord testified that the Tenant replaced the oven without prior notification to the Landlord.

The Landlord testified that he was aware that water was dripping in the shower when the Tenant moved in. He testified that it was small drips and he told the Tenant that he would repair it. The Landlord testified that the Tenant repaired the leak himself on November 15, 2018.

The Landlord testified that the Tenant notified him about the electrical switch in March or April 2018. The Landlord testified that on May 21, 2018, he attended and noticed that the switch had been opened by the Tenant. The Landlord testified that the sink was plugged because the garburator was not working.

The Landlord testified that after he was notified that the dishwasher was not working he went to an appliance store in May. He testified that he placed an order for a dishwasher

and had to wait for delivery. He testified that he went to the unit to install the dishwasher in July, but the Tenant refused to let him in.

The Tenant testified that his claim for a rent reduction is directly related to his claim for compensation in the amount of \$8,900.00

Landlord Right of Entry

The Tenant testified that the Landlord often shows up when he has not given notice. He testified that the Landlord showed up to inspect the unit. The Tenant testified that he let the Landlord in the unit but it was not by choice. The Tenant submitted that this has occurred 12 or 13 times in a period of one year. The Tenant testified that the Landlord was trying to sell the furniture from the room that the Tenant had asked for the furniture to be removed.

In reply, the Landlord testified that he has not attended the unit 12 times without notice. He testified that his sister attended the unit on the Landlords to sell furniture that the Tenant did not want to use. The Landlord submitted that his sister brought potential purchasers with her on one or two occasions and they knocked on the door and asked for permission to enter.

Access to Tenant

The Tenant applied for an order for the Landlord to allow the Tenant access to the rental unit. The Tenant testified that this is no longer an issue in dispute and he does not want to proceed with it.

The Tenants request for an access order is dismissed.

Locks

The Tenant testified that the Landlord entered the unit without permission on three occasions. The Tenant testified that the Landlord entered the unit in February, March and on May 21, 2018.

The Tenant is not seeking that the locks be changed; he is seeking that the Landlord not have keys to the rental unit.

In reply, the Landlord testified that he only entered the unit on May 21, 2018. He testified that he did not enter on other dates.

Consent to Assign or Sublet and Dispute of Rent Increase

The Tenant testified that the Landlord did not increase the rent; however, the Landlord wanted to because the Tenant wanted to have more occupants live in the rental unit.

The Tenant testified that he asked the Landlord to stop harassing him and stop trying to control who the Tenant allows into the rental unit. The Tenant testified that he received an email from the Landlord that states that the Tenants brother and girlfriend are not permitted in the unit.

In reply, the Landlord testified that he encountered four unknown people enter the house who said they lived there. He testified that he informed the Tenant that the Tenant cannot have additional occupants live in the unit without getting permission from the Landlord. The Landlord informed the Tenant that if he wants to increase the number of occupants living in the unit then the Landlord and Tenant will have to renegotiate the terms of the tenancy.

The Landlord testified that he did not issue a notice of rent increase. The Landlord testified that he has a right to know who is living in the rental unit.

Analysis

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Section 32 of the Act states that 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.*

Section 33 of the Act states that “emergency repairs” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
 - (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.

Residential Tenancy Policy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their own, the Tenant may be entitled to damages, even where there has been no negligence on the part of the Landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Compensation for Loss of Use of Rental Property

I find that there is insufficient evidence from the Tenant to establish that the Tenant rented out the entire rental property under the tenancy agreement. The Tenant testified that on November 15, 2018, he felt blackmailed into accepting the terms of the tenancy; however, he did not provide any further information. If the Tenant was pressured into the tenancy, it is reasonable to expect that the Tenant would have raised the issue or taken some steps to address the issue prior to the hearing. The Tenant did not respond to the Landlord’s testimony that the Tenant asked to share internet with the other occupant.

I find that the rental unit contained some of the Landlord's bedroom furniture in two of the bedrooms and the garage. The Tenant asked the Landlord to remove the furniture and the Landlord complied. I find that it took approximately six months for the Landlord to remove all the furniture. While I find that six months is a long time to remove the furniture; there is insufficient evidence from the Tenant that he suffered a loss due to the presence of furniture in the rooms and garage. The Landlord testified that the Tenant was renting out the rooms and was using the furniture. The Tenant agreed that his phone number could be given to parties interested in purchasing the furniture. The Tenant did not explain how the presence of the furniture in the rooms or garage resulted in a loss to the Tenant. The Tenants request for compensation is dismissed.

Compensation for Repairs

In accordance with section 33 of the Act, a Tenant may have emergency repair made in certain circumstances. I find that the repair of the oven was an emergency repair because it was related to an electrical issue where the oven would not turn off. I find that the Tenant's claim for the replacement cost of the oven fails because the Tenant did not meet the conditions of contacting the Landlord by telephone and did not provide the Landlord with a written account of the repair accompanied by a receipt for the amount claimed. The Tenant testified that he did not have the Landlords authorization and did not ask the Landlord to pay him back.

I find that the leak in the bathroom was not a major leak and is not considered an emergency repair. I find that the Tenants claim to recover the cost to repair a leak in the bathroom fails. The Tenant testified that he called someone to fix the master bathroom shower on November 21, 2018, before the Landlord could come to repair it. The Tenant did not provide a receipt for the amount claimed. The Tenants request for \$200.00 is dismissed.

I find that the electrical switch is an emergency repair because it controls the garburator which is affecting the drainage of water in the kitchen sink. The parties did not agree on when the issue was reported to the Landlord. The Tenant testified that he reported in at the start of the tenancy and the Landlord testified that he was informed in March 2018. The parties agree that switch has not been repaired. I find that the Landlord is taking an unreasonable amount of time to repair the electrical switch. The Tenant is seeking compensation of \$100.00; however the repair has not been made by the Tenant. The Tenants request for compensation of \$100.00 is dismissed.

Repairs

Electrical Switch

The parties agree that switch has not been repaired. I order the Landlord to have the electrical switch that controls the garburator repaired within two weeks of the date of this Decision. If the Landlord fails to have the switch repaired, the Tenant may apply for dispute resolution seeking compensation.

Dishwasher

I find that the Landlord was informed by the Tenant in January 2018, that the dishwasher did not work. I find that the Tenant has followed up on the issue by requesting in writing that the Landlord repair the dishwasher. I find that the Landlord attended the rental unit on May 21, 2018, to look at the dishwasher, and ended up conducting an inspection of the unit. While I acknowledge the Landlords testimony that he ordered a dishwasher in May 2018, I find that the dishwasher has not been repaired or replaced as of the date of this hearing.

I order the Landlord to have the dishwasher repaired or replaced within two weeks of the date of this Decision. The tenancy agreement included the use of a dishwasher. I find that the Tenant has suffered a loss of value in the tenancy. I grant the Tenant \$75.00 per month from June 2018 to November 2018, for the loss of use of the dishwasher. I grant the Tenant \$450.00. If the Landlord fails to have the dishwasher repaired or replaced the Tenant may apply for dispute resolution seeking additional compensation.

Landlord Right of Entry and Authorization to Change Locks

Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
 - (i) the purpose for entering, which must be reasonable;*
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*

Section 70 of the Act provides that the director, by order, may suspend or set conditions on a landlord's right to enter a rental unit if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29. The director, by order, may authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

The Landlord acknowledged that he entered the rental unit without permission on one occasion.

There is insufficient evidence from the Tenant to establish that the Landlord entered the rental unit without authorization on more than one occasion. The occasions where the Landlord or his sister attended the rental unit without notice and the Tenant agreed to let them in to the unit is not unauthorized entry. The Tenant had the right to refuse entry on these occasions.

I decline an order to suspend or set conditions on the Landlords right to enter the rental unit and I decline an order authorizing the Tenant to change the locks.

Dispute of Rent Increase

I find that the Landlord did not issue a rent increase and the Landlord is not unreasonably withholding consent for the Tenant to assign or sublet the rental unit.

I find that the Landlord has the right to be made aware of and authorize new occupants residing in the rental unit. If the tenancy agreement does not provide for additional occupants, the Landlord is at liberty to seek a change to the tenancy agreement in exchange for permitting the additional occupants.

I find that the Landlord became aware that the Tenant has allowed additional occupants to live in the rental unit and the Landlord proposed a change to the amount of rent owing each month. I find that the Landlord did not issue an illegal rent increase.

The Tenants request to dispute a rent increase is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant the amount of \$550.00. I authorize the Tenant to deduct the amount of \$550.00 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful. I order the Landlord to complete the repairs listed above within two weeks of the date of this decision.

I grant the Tenant the amount of \$550.00 for a loss of value in the tenancy. I authorize the Tenant to deduct the amount of \$550.00 from one (1) future rent payment.

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 26, 2018

Residential Tenancy Branch