



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Starlight Investments, Devon Properties Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RP, OLC, MNDCT, FFT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlords did not. I waited until 9:45 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that he had served the landlords by way of registered mail on April 9, 2020. The tenant provided tracking numbers in his evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the tenant's application on April 14, 2020, 5 days after mailing. The landlord did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to an order for the landlord to perform repairs?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

This month-to-month tenancy began in May of 2006. The tenant testified that he was subject to a rent increase effective December 1, 2019, and monthly rent is currently set at \$1,237.13, payable on the first of every month.

A hearing was previously held regarding the tenant's application for repairs and a rent reduction. In the decision dated December 15, 2017, the Arbitrator granted the tenant a "25% rent reduction in his ongoing rent, commencing January 2018, until the exterior and common area work is completed."

The tenant testified that he was concerned that despite the fact that the order was made in December of 2017, the landlord had yet to complete all the repairs in the common areas. The tenant wrote a letter to the landlord via the building manager LF, dated January 7, 2020, which was included in his evidentiary materials.

In the tenant's letter the tenant stated that he had yet to receive a letter confirming that the repairs to the exterior and common areas have been completed. The tenant provided a list of repairs that he felt have yet to be addressed including:

- 1) no furniture in the main lobby
- 2) no furniture in the laundry room
- 3) front lawn has not been restored to the pre-construction state
- 4) elevator repairs not complete with a temporary carpet covering the old, damaged vinyl flooring. The tenant expressed concern about the lack of cleanliness in the area due to the heavy traffic, and lack of regular cleaning.

The tenant informed the landlord that as he had yet to receive written confirmation of the completed repairs, and due to his observations of the repairs that need to be addressed, he would continue to deduct the 25% as allowed by the decision dated December 15, 2017.

The tenant testified that the landlord did address the first two concerns involving the lobby and laundry room, but the last two items have not been addressed. The tenant testified that instead of receiving written confirmation from the landlord that the repairs have been, or will be, completed, the tenant received a response from the building manager informing him that if he failed to pay the monthly rent in full, that he would be subject to a 10 Day Notice for Unpaid rent and a letter from the landlord. The tenant testified that he felt threatened, and he felt that did not have a choice but to start paying the entire monthly rent even though he felt that he was still entitled to 25% rent reduction. The tenant has continued to pay the full monthly rent, but is requesting reimbursement of the 25% rent reduction for the months he had paid the rent in full.

The tenant is requesting that the landlord complete the repairs, and that the landlord provide him with confirmation when these repairs are completed.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

The undisputed history between the two parties is that a hearing was held, and on December 15, 2017, the tenant was granted a rent reduction of 25% beginning on January 1, 2018. The tenant is entitled to the rent reduction until the "exterior and common area work is completed."

The undisputed testimony of this tenant in this hearing is that the landlord has not completed the work on the common areas, but has ordered the tenant to pay the full monthly rent or be served with Notice to End Tenancy.

In consideration of the evidence before me, I find that the landlord has not completed the work to the common property, and therefore the tenant is entitled to the 25% rent reduction that was previously ordered. I find that the landlord has failed to provide the tenant with written confirmation that the work to the common areas have been completed, and the order made by the Arbitrator on December 15, 2017 still stands.

Given the testimony and evidence before me, I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

In the event that no further repairs or maintenance is required, I order that the landlord provide the tenant with written confirmation that all the necessary repairs or maintenance to the common areas have been completed. I order that this written confirmation be provided within the latter of 2 weeks of the date this order is received, or when the common area work is completed.

I order that the landlord comply with the order made on December 15, 2017, which allows for a 25% rent reduction until the work to the common areas are completed.

I order that the tenant be provided with a 25% refund of the monthly rent paid by tenant for January 2020 through to May 2020 unless the landlord can provide written confirmation that the work has been completed.

I allow the tenant to recover the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

I order that the landlord maintain the property, and undertake and complete repairs as required by section 32 of the *Act*.

In the event that no further repairs or maintenance is required, I order that the landlord provide the tenant with written confirmation that all the necessary repairs or maintenance to the common areas have been completed. I order that this written

confirmation be provided within the latter of 2 weeks of the date this order is received, or when the common area work is completed.

I order that the landlord comply with the order made on December 15, 2017, which allows for a 25% rent reduction until the work to the common areas are completed.

I order that the tenant be provided with a 25% refund of the monthly rent paid by tenant for January 2020 through to May 2020 unless the landlord can provide written confirmation that the work has been completed.

I allow the tenant to recover the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

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 29, 2020

Residential Tenancy Branch