



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OLC, RP, MNDC, FF

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord comply with the Act by making repairs, for a Monetary Order for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are repairs required?
2. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on October 1, 2009. Rent was \$900.00 per month until October 1, 2010 when it was increased to \$925.00 per month.

The Tenant said that when she moved into the rental unit she noticed a stain in a corner of the ceiling in the living room near the balcony and that this area of the ceiling started leaking on December 16, 2009. The Tenant said she verbally reported the leak to an agent of the previous property management firm who then inspected the leak with the Tenant but took no further action. Consequently, the Tenant said she sent a letter dated December 24, 2009 to the former property manager requesting that repairs be made to address the leak as well as the brown stain on the ceiling and wet carpet below the leak.

The Parties agree that the current Landlord took over as the property manager of the rental property on January 1, 2010. The Tenant said she spoke to an agent of the Landlord in February 2010 about the leak and the agent inspected the leak with a maintenance person. The Tenant said nothing more was done about the leak so on August 8, 2010 she sent another letter to the Landlord's agent requesting that the ceiling be repaired as well as the stained ceiling, and the wet carpet (including any mould that she believed might now be developing under the carpet). The Tenant the Landlord's agent sent a plumber to the rental unit to investigate the leak but he told her that it was not a problem he could repair.

The Tenant said nothing more was done by the Landlord so she hired a lawyer and on November 18, 2010 she sent another letter to the Landlord's agent advising her that the damage caused by the leak in the ceiling was getting worse and asked the Landlord what it intended to do about it. The Landlord's agent claimed that she did not take over as the property manager for the Landlord until October 2010 and was unaware of any previous correspondence sent to the Landlord. The Landlord said that the first time she became aware of the leak in the rental unit was when she received the Tenant's letter dated November 18, 2010. The Landlord admitted that she spoke to the building manager who advised her that she had inspected the leak in August 2010.

The Parties agree that the Landlord's agent came to the rental unit on November 25, 2010 and agreed to repair the ceiling and to steam clean the carpet. Tenant said the leak in the ceiling was repaired on December 8, 2010 by caulking an area of the balcony of the suite above hers and by repainting the ceiling. The Tenant also said that someone inspected under the carpet and told her that there was no mould. The Tenant said, however that the brown stain on the ceiling has returned and she is concerned that either the leak has not been repaired or that there is mould in the ceiling. Consequently, the Tenant sought an Order that the Landlord repair the ceiling of the rental unit. The Landlord argued that there could not be mould in the ceiling because it was concrete and because the stucco covering it had a brown stain instead of black. The Landlord's agent said that she was unaware that the stain had returned and agreed to have a maintenance person inspect it and make further repairs.

The Tenant also sought compensation for the loss of use of part of the rental unit during the time that the Landlord failed to repair the leak. The Landlord's agent said she was not opposed to compensating the Tenant however she argued that a rent rebate of 15% was unreasonable given that 15% of the rental unit was approximately equivalent to one-half of the area of the living room in the rental unit. The Landlord's agent said the area of water damage was only 8 square feet although she admitted that the Tenant probably would not have used a larger area as a result of the leak. The Landlord also argued that the ceiling only leaked when it rained.

Analysis

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

I find on a balance of probabilities that the Tenant gave the former Landlord as well as the current Landlord notice of the leak in the ceiling as early as December 16, 2010. I also find that despite repeated verbal and written requests to the Landlord from the Tenant to repair the leak, nothing was done until December 8, 2010, almost a full year later. Consequently, I find that the Landlord breached its duty under s. 32 of the Act to

make repairs and as a result, I also find that the Tenant is entitled to compensation for her loss of use of part of the rental unit during that time.

The Tenant argued that she should be entitled to a rebate of 15% of her rent for her loss of use of the rental unit but the Landlord argued that that amount was unreasonable and argued that 5% would be more appropriate. The Landlord provided a plan of the rental unit which shows the total square footage to be 705 square feet. The Parties agreed that the leak in the ceiling affected an immediate area approximately 2 feet wide by 4 feet in length. I find it reasonable that the Tenant would not have used this area as well as an additional around the leak and conclude that the Tenant probably lost the use of a total area of 4 feet by 6 feet (for a total of 24 square feet). Consequently, I find that the Tenant lost the use of approximately 8% of the total area of the rental unit.

I also find that the Tenant is entitled to a rent rebate for the months of January 2010 to November 2010 during which she made rent payments totalling \$9,950.00. Consequently, I find that the Tenant is entitled to compensation equivalent to 8% of her rent payments during that period or \$796.00. As the Tenant has been successful in this matter, I also find that she is entitled to recover the \$50.00 filing fee for this proceeding. ***I order pursuant to s. 72(2) of the Act that the Tenant may deduct the monetary award of \$846.00 from her next rent payment when it is due and payable to the Landlord.***

However, I make no order for repairs at this time. The Landlord said the Tenant must submit a repair order to the Landlord's agent regarding the return of the stain on the ceiling. If the ceiling has not been repaired within 30 days of that date, then the Tenant may reapply for a repair order.

Conclusion

The Tenant's application for compensation is granted. The Tenant's application for repairs is dismissed with leave to reapply. 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 16, 2011.

Residential Tenancy Branch