Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, ERP, RP, OLC, PSF, RR, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to provide services or facilities required by law; for authorization to reduce rent for services or facilities agreed upon but not provided; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for deficiencies with the rental unit; whether there is a need for an Order requiring the Landlord to make repairs to the rental unit; whether there is a need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; whether there is a need for an Order requiring the Landlord to provide services or facilities required by law; whether the Tenant should be permitted to reduce rent for services or facilities agreed upon but not provided; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the parties never entered into a written tenancy agreement for this unit; that the Tenant has been living in the rental unit for many years; and that the Tenant currently pays monthly rent of $750.00**.** The Tenant contends that he pays his rent to the Respondent and the Agent for the Landlord contends that rent is paid to a company and that the Respondent is the president of that company.

The Tenant stated that there have been ongoing problems with the septic system for many months; he stated that the toilet frequently overflows when it is flushed; that if someone is using water elsewhere in the house the sewage backs up into the bathtub when the shower is being used; that sewage backs up into the bathtub when the washing machine is in use; and that the Landlord is in the process of connecting the rental unit to the municipal sewer system.

The Agent for the Landlord stated that there is currently no problem with the septic system and that the Landlord is in the process of connecting the rental unit to the municipal sewer system.

The Landlord and the Tenant agree that septic system was repaired in 2009.

The Tenant stated that the repairs resolved the problem until November of 2010 at which time sewage was pumped into the yard as a result of blocked septic field; that on January 21, 2011 the pump in the septic tank stopped working due to an electrical fire; that he reported this problem to the Landlord on January 21, 2011; and that the septic system has not worked properly since that date.

The Agent for the Landlord stated that the septic system is working properly; that the pump is currently under warranty and that it could be repaired without charge if there was a problem with the pump. He stated that sometime in September of 2011 the Landlord had the company who installed the pump examine the septic system; that the technician determined there was no problem with the septic system; and that the Tenant would not permit the technician to enter the rental unit to determine if the problem was originating from inside the rental unit. The Tenant denies refusing access to the rental unit to any person allegedly attempting to repair the septic system.

The Agent for the Landlord stated that on October 17, 2011 he gave the Tenant permission to have the septic system repaired if there was truly a problem; that he advised the Tenant the Landlord would pay for the repairs to the septic system; and that he offered to pay the Tenant $200.00 for arranging the repairs.

The Tenant initially stated that the Landlord did not give him permission to have repairs made to the septic system. Much later in the hearing the Tenant stated that the Landlord had given him verbal permission to have someone inspect the rental unit but he elected not to assist with the problem because he did not believe it was his responsibility.

The Agent for the Landlord and the Tenant agree that the septic tank was pumped out on March 30, 2011. The Tenant stated that this temporarily relieved the problem however the problems returned once the tank was filled, as he believes the pump in the septic system is not working.

The Agent for the Landlord stated that the Landlord is willing to inspect the septic system and make any repairs necessary to ensure it is working properly. The parties agreed that the Landlord would have the system inspected on November 18, 2011 and that the Tenant would permit the technician access to the rental unit at that time.

In response to a series of leading questions directed to the Witness for the Tenant by the Tenant, the Witness for the Tenant stated that she has observed a series of problems with the septic field, all of which are consistent with evidence provided by the

Tenant. She stated that she has heard the Tenant discuss the problems with the Landlord but the Landlord has made no recent attempts to repair the septic problem recently, although she did hear him tell the Tenant that the complex was going to be connected to municipal sewer prior to this hearing.

The Tenant stated that the bathtub tap has been leaking for an extended period and that he first advised the Landlord of the problem in February of 2009; that he advised him on a monthly basis thereafter; and that the leak has never been repaired.

The Agent for the Landlord stated that the Landlord was never informed of the leaking tap until he received the Tenant's Application for Dispute Resolution; that the Landlord sent a repairman to the rental unit on October 27, 2011 but the Tenant would not allow the repairman to access his rental unit; and that he personally informed the Tenant that this person would repair the tap.

The Tenant stated that someone did come to his door on October 27, 2011 but he did not explain that he was there to repair the leaking tap, so he did not provide him with access to the rental unit. In response to a leading question presented by the Tenant, the Witness for the Tenant stated that she has never observed a plumber come to repair anything in the rental unit.

The Tenant stated that the oven has not worked since the first month of his tenancy; that he first advised the Landlord of the problem in October of 2007; and that the oven has never been repaired.

The Agent for the Landlord stated that the Landlord was not informed of a problem with the oven until May of 2011, at which time the oven was repaired. The Landlord submitted a cheque made out to an appliance company from the Landlord which he contends is proof that the oven was repaired in May. The Tenant contends that the oven in the upstairs rental unit was repaired in May of 2011 and that his oven has never been repaired.

The Landlord and the Tenant agree that the heat and hot water in the residential property are powered by natural gas. The Tenant stated that the gas company discontinued service on two occasions because the gas bill had not been paid. He stated that sometime during the first week of September of 2011 the gas was shut off; that he reported the problem to the Landlord; and the gas service was restored approximately two days after.

The Tenant stated that the gas company discontinued service again in October for a period of approximately two weeks. He estimates the service was discontinued on approximately October 10, 2011; that he reported the problem to the Landlord's employees on two occasions, although he does not know who he spoke with; and that service was restored on approximately October 24, 2011.

The Agent for the Landlord stated that prior to being served with this Application for Dispute Resolution he was not aware that gas service was disrupted at the rental unit during September, as the occupant living in the upper rental unit was responsible for paying the gas at that time. He stated that on, or about, October 26, 2011 the occupant living in the upstairs unit advised the Landlord that the service had been discontinued the previous day; that the Landlord transferred the service into its name on, or about, October 27, 2011; and that service to the complex was restored on October 27, 2011. The Agent for the Landlord stated that the Tenant did not advise the Landlord that the service had been discontinued in October of 2011until he served the Landlord with this Application for Dispute Resolution.

In response to a series of non-leading questions I directed to the Witness for the Tenant, she stated that she believes the gas service was discontinued in the rental unit for approximately 2 or 2.5 weeks in October and for an unknown period during September.

The Tenant submitted a letter from his brother, in which the brother declared that he would not bring his daughter to the rental unit during the past year as a result of raw sewage “inside and out” and that “half the time the hydro and gas is shut off”.

Analysis

As the Tenant has been paying monthly rent to the Respondent or a company owned by the Respondent for many years, I find that the parties have an implied tenancy agreement which currently requires the Tenant to pay monthly rent of $750.00. As the Tenant is of the understanding that the Respondent is his landlord and the landlord has not created a written tenancy agreement which clearly identifies the identity of the landlord, as is required by section 13 of the *Act*, I find that the Tenant reasonably concluded that the Respondent is his landlord. I find that it would be unreasonable, in these circumstances, for the Respondent to argue that the company, of which he is the president is actually the landlord, when that information was not clearly communicated to the Tenant in a written document.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation for damages flowing from that fact or set of circumstances, not on the person who is denying the damage. In these circumstances, the burden of proving there is a deficiency with the rental unit rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that there is currently a problem with the septic system. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates the testimony of the Tenant. In my view the Tenant could have easily corroborated his claim by providing photographs of the sewage back up or the septic pump that was allegedly damaged by fire; he could have provided documentary evidence from a qualified technician who has inspected the septic system; or he could have submitted documentary evidence from a municipal or provincial inspector.

In reaching the aforementioned conclusion I was further influenced by the documentary evidence submitted by the Landlord which shows the septic system was repaired in 2009; that the tank was pumped out in October of 2011; and that the Landlord is in the process of connecting the property to municipal sewer lines. This evidence causes me to conclude that the Landlord is motivated to maintain his property and lends credibility to the Agent for the Landlord's testimony that the system is functioning properly.

I note that the Tenant's testimony was corroborated by the Witness for the Tenant, however I find her testimony to be of limited value, given that she is the Tenant's wife and that the evidence she provided in regards to the septic system was elicited entirely by leading questions presented by the Tenant.

As I have determined that the Tenant submitted insufficient evidence to show that there is currently a problem with the septic system or that the Landlord has not responded appropriately when problems arose, I dismiss the Tenant's application for compensation arising from a problem with the septic system.

As the Agent for the Landlord expressed a willingness to have the system inspected and repaired if necessary, I hereby Order to follow through on that agreement and I Order the Tenant to provide the Landlord with unrestricted access to his rental unit for the purposes of the inspection/repairs on November 18, 2011 and thereafter with written notice from the Landlord, provided at least 24 hours in advance. In an attempt to avoid further discord in this tenancy, I further Order the Landlord to provide the Tenant with written notice of the status of the septic system, or sewer connection if that process has been completed, no later than December 30, 2011.

While I accept the Tenant's evidence that his bathtub tap has been leaking for an extended period of time, I find that he submitted insufficient evidence to establish that he informed the Landlord of the problem prior to filing an Application for Dispute Resolution. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's statement that the Landlord was regularly advised of the problem prior to the filing of this Application for Dispute Resolution or that refutes the Agent for the Landlord's statement that the Landlord was not advised until after the Application for Dispute Resolution was filed.

As the Tenant has failed to establish that the Landlord knew of the leaking tap prior to the filing of this Application for Dispute Resolution, I find that there can be no reasonable expectation that the Landlord would repair the deficiency. I therefore dismiss the Tenant's claim for compensation for any inconvenience arising from the leaking tap.

Now that the Landlord has been made aware of the leaking tap, I hereby Order the Landlord to repair the tap prior to December 15, 2011 and I Order the Tenant to provide the Landlord with unrestricted access to his rental unit for the purposes of the making that repair provided the Landlord gives him written notice, at least 24 hours in advance.

In an attempt to avoid further discord in this tenancy, I further Order the Landlord to provide the Tenant with written proof of the repair, no later than December 30, 2011. As this portion of the Tenants claim has been dismissed and I have issued an Order directing the Landlord to repair the tap, I find no reason to determine whether or not the Tenant denied access to a plumber on October 27, 2011.

While I accept the Tenant's evidence that his oven has not worked for most of this tenancy, I find that he submitted insufficient evidence to establish that he informed the Landlord of the problem prior to May of 2011. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's statement that the Landlord was advised of the problem shortly after the start of the tenancy or that refutes the Agent for the Landlord's statement that the Landlord was not advised until May of 2011.

I find that the Tenant has submitted insufficient evidence to establish that the oven was not repaired in May of 2011, as stated by the Agent for the Landlord. I find that the cheque that was submitted in evidence causes me to conclude that a stove was repaired somewhere in the residential complex in May of 2011. This causes me to conclude that the Landlord is inclined to make necessary repairs, which lends credibility to the Agent for the Landlord's testimony that the Tenant's oven was repaired in May.

While I accept that it is possible that the upstairs stove was actually repaired in May of 2011, I find that the Tenant has provided no evidence to corroborate the Tenant's testimony that his oven was not repaired in May. As the Tenant has failed to establish that the oven was not repaired in May of 2011, I dismiss the Tenant's claim for compensation for any inconvenience arising from the malfunctioning oven.

In an attempt to avoid further discord in this tenancy, I Order the Landlord to provide the Tenant with written documentation, prior to December 15, 2011, that clearly shows the oven in his rental unit has been repaired. In the event that the Landlord fails to provide this documentation by December 15, 2011, the Tenant has the right to file another Application for Dispute Resolution, in which he applies for an Order to repair the oven.

On the basis of the testimony of the Tenant and the Tenant's witness, I find that the Tenant was without gas service, and therefore without heat and hot water, for a period of three days in September and two weeks in October. In reaching this conclusion I was influenced by the fact that the Agent for the Landlord did not refute this testimony and by the fact that it is entirely possible that the Landlord would not have been aware of the disruption in gas service, as the gas bill at that time was being paid for by the occupant living in the upper rental unit.

As there is no dispute that heat and hot water was included in the monthly rent, I find that the Tenant is entitled to some compensation for the disruption of these services. I find that this is a significant breach of the Tenant's right to the quiet enjoyment of his rental unit, and I award compensation of $75.00 for the disruption of service in September, which is the equivalent of three days of rent.

I find that the Tenant has submitted insufficient evidence to establish that he advised the Landlord of the disruption in service at any point in October. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that he reported the problem to the Landlord or that refutes the Landlord's statement that the problem was actually reported by the occupant in the upper unit and that it was never reported by the Tenant. As the Tenant has failed to establish that the Landlord knew of that the service had been disrupted for a period of two weeks, I find that the Tenant should not be entitled to compensation for that entire period. I find it reasonable to assume that the service could have been restored within three days had the Landlord been notified of the problem and I therefore award compensation of $75.00 for the disruption of service in October, which is the equivalent of three days of rent.

In making a determination in this matter I found the letter from the Tenant's brother to be of limited evidentiary value. In making this determination I was influenced by the declaration that "half the time the hydro or gas is shut off". I note that the Tenant has never reported that the hydro has ever been discontinued, which causes me to question the veracity of the brother's declaration. More importantly, the declaration that the gas is shut off "half the time" is such an exaggeration of the facts as presented by the Tenant that I have no confidence in the observations of this individual.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of $150.00, which represents compensation for being without heat and hot water for a period of time in September and October. Based on these determinations, I hereby authorize the Tenant to reduce his rent payment in December of 2011 by $150.00.

I find that the Tenant's Application for Dispute Resolution has been largely unsupported, given that his claim was for $10,950.00 and I have only awarded $150.00. I find that it is possible that the parties may have been able to reach a settlement in this matter that is close to the award I have made if the Tenant had made a more reasonable claim. I therefore dismiss the Tenant's claim to recover the cost of filing the Application.

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 17, 2011.