



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for losses or compensation under the Act or tenancy agreement, to allow the Tenant to reduce rent for repairs, service or facilities agreed upon, but not provided and to recover the filing fee for the Application.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified she served the Landlord with the Notice of Hearing and her Application and evidence by registered mail, sent on December 21, 2011. Under the Act, registered mail is deemed served five days later. I find that the Landlord has been served in accordance with the Act, however, the Landlord did not appear at 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.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord?

Is the Tenant entitled to reduce rent?

Background and Evidence

This tenancy began on October 1, 2011, and has a fixed term of two years. The monthly rent is \$3,000.00, and the Tenant paid the Landlord a security deposit of \$1,500.00, and a pet damage deposit of \$200.00.

The condition inspection report performed at the beginning of the tenancy sets out repairs to be completed at the start of the tenancy and states, "Basement carpet and outdoor-indoor rug to be replaced."

The Tenant testified that the carpet in the basement has still not been replaced as set out in the report. The Tenant testified as to several delays throughout October and into November that prevented the carpet being replaced. The Tenant also explained how the delay of the carpet installation delayed her ability to move in and use the downstairs portion of the rental unit. The Tenant's sons were to move into the basement, but this was delayed until early November 2011.

The Tenant testified that the upper portion of the rental unit has 3 bedrooms, 2 bathrooms, a kitchen and a living room, while the basement has a family room, dining room, 3 bedrooms, a kitchen and a large bathroom.

The Tenant claims for ½ month of rent for loss of use of this portion of the rental unit for one month. The Tenant requested to be compensated for the rent she had to pay for her sons to stay on in her previous rental unit and for the utilities she had to pay for them at the previous rental unit.

The Tenant testified that she informed the Landlord that she would be satisfied if the carpet was cleaned again, as it smelled of animals from the previous tenancy, instead of being replaced, if the Landlord paid for the cleaning. The Tenant paid for the cleaning, however, the Landlord has not yet reimbursed her for this cost.

The tenancy agreement sets out that laundry is free and included with the rent. An addendum to the tenancy agreement sets out that the Landlord is responsible for the repair and replacement of the appliances at the rental unit, except two sets of washers and dryers. These are the Landlords' and not owned by the Tenant.

The Tenant testified that when they went to use the washer in the downstairs area it had two inches of rusty water in it. The Tenant explained a repair person came to the rental unit and informed her that the washer could not be repaired. The Tenant testified that the washer and dryer appear to be from the 1980s, and that she wants these both replaced.

The Tenant also testified that she wants the ability to rent out a room in the basement of the rental unit and characterised this as subletting the rental unit. The Tenant also wants a change to the pet terms of the tenancy agreement as she wants to have another pet.

Analysis

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

I find that the Tenant lost the use of the basement at the rental unit for the month of October and part of early November 2011. I find that this is the equivalent of ½ the rental unit and therefore, I allow her the sum of \$1,500.00 in compensation.

I do not allow the Tenant compensation for rent at the previous rental unit as this is included in the \$1,500.00 awarded above. I further do not allow the utilities, as these were used by the Tenant's sons at the other rental unit and are not recoverable.

I also allow the Tenant the cost of cleaning the carpets in the amount of \$412.16, provided she provides the Landlord a copy of the carpet cleaning invoice for this amount.

I find that the clause in the addendum attempting to have the Tenant pay for repairs to the Landlord's appliances is void, as it attempts to contract outside the Act. Under section 5 of the Act parties may not avoid or contract outside of the Act.

As the Landlord has supplied the appliances for the rental unit, it is the Landlord who must either repair or replace those appliances that do not function. It is not the responsibility of the Tenant to do this and the parties may not contract outside of the Act for this.

Therefore, I order the Landlord to immediately repair or replace the washing machine in the basement. So long as the dryer is working properly, it does not have to be repaired or replaced. I do not provide the Tenant with monetary compensation for loss of use of the washer. There was a functioning washer upstairs, and the Tenant has been generally compensated for loss of use of the basement already, as described above.

As to renting out a room in the basement or having another pet, these requests require the prior written consent of the Landlord. The tenancy agreement only considers the Tenant and her three children as the occupants of the rental unit and there was only one pet allowed at the outset of the tenancy. This is what was bargained for at the outset of the tenancy and may not be unilaterally altered by the Tenant. The parties must agree, in writing, to alter any terms of the tenancy agreement.

Conclusion

I find the Tenant has established a monetary claim of **\$1,962.16** for losses, comprised of \$1,500.00 in loss of use of the rental unit, \$412.16 for carpet cleaning, and the \$50.00 filing fee for the Application. To recover this amount, the Tenant may deduct the sum of \$1,962.16 from one month of rent.

This decision is final and binding on the parties, except as provided under the Act, and 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: January 17, 2012.

Residential Tenancy Branch