



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, CNR, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs and emergency repairs and an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary matter: The landlord appeared late into the hearing, at which time he confirmed the tenant had paid rent in full and that the Notice should be cancelled. The landlord did not wish to proceed on the Notice, but rather to respond to the other claims of the tenant.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and an order requiring the landlord to make repairs and emergency repairs?

Background and Evidence

This month to month tenancy started on or about August 1, 2011, monthly rent is \$475.00 and the tenant paid a security deposit of \$237.50 at the beginning of the tenancy.

The tenant's monetary claim is for \$507.40, for hotel and fuel expenses.

Tenant's testimony-

At the end of March 2012, an infestation of carpenter ants was observed when they began falling in large numbers from her ceiling. The tenant informed the landlord of the infestation, but it took 10 days for the landlord to attend the premises. This resulted in the tenant being forced to stay in a local hotel for those days.

Since that time, although they are still there, the number of carpenter ants has subsided, but presently, there are carpet beetles inside the rental unit and rodents in her walls and ceiling, which the landlord has failed to exterminate.

The landlord called out an extermination company in July, but sent the representative away before allowing a treatment.

Tenant's witness-

The witness confirmed seeing the ants and other insects and rodents, and that he helped the landlord put up the plywood and poison.

The witness lent the tenant money to stay at the local hotel.

Landlord's testimony-

The landlord attending presented that he is a caretaker for the manufactured home grounds.

When the tenant notified him of the ants in March, the landlord attended the premises, cut a hole in the ceiling, removed the nest, applied poison and replaced the plywood.

The landlord blocked the ants' and rodents' access to the rental unit.

To the best of his knowledge, the problem had been corrected as the tenant never notified him of any recurring problem.

The landlord confirmed that an extermination company attended the premises in July, but that he sent him away when he found out how much the treatment cost.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Monetary claim-

I find the tenant failed to meet step 3 of her burden of proof as she failed to submit evidence that she paid for a hotel or fuel to go back and forth to the hotel. As there was no proof of a payment, such as would be shown with receipts, I dismiss the tenant's claim for \$507.40, without leave to reapply.

Repairs and emergency repairs-

Section 32 of the Act requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Section 33 requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property.

On a balance of probabilities, I find the tenant has established that there is an insect and rodent infestation in the rental unit. There is, however, no proof of an infestation from March until July, due to the tenant's lack of written notices to the landlord complaining of the infestation.

I accept that the landlord was again notified by the tenant sometime in July, due to the landlord having an extermination company attend the rental unit that month.

I find the landlord's statement that he did not allow the treatment due to costs to be a confirmation that the landlord failed to comply with his obligations under the Act.

I accept that the landlord has taken some steps in remedying the insect infestation, but I find that these steps have resulted in insufficient action necessary to rid the rental unit of the insects and rodents. I find this insufficient response has caused the tenant to suffer a loss of use and enjoyment of her rental unit, beginning in July, resulting in a diminished value of the tenancy of \$25.00 per month, which I find to be a reasonable amount.

Therefore, pursuant to section 62 of the Act, I grant the tenant a retroactive rent abatement for July and August in the amount of \$50.00 (\$25.00 for each month).

I direct the tenant to redeem the \$50.00 rent abatement by deducting this amount from her September rent payment.

I also accept that the insect and rodent infestation will continue to diminish the value of the tenancy by \$25.00 per month until such infestation has been eradicated.

I direct the landlord to hire a licensed, professional pest control company, no later than August 31, 2012, to correct the insect and rodent infestation and to issue a written report to the tenant when the process has been completed and that the rental unit is free from insects and rodents.

Until the completion of the extermination, I grant the tenant a continuing rent abatement of \$25.00 per month, for September 2012 forward and I further authorize the tenant to reduce future monthly rent payable by \$25.00 until such time as the licensed, professional company has issued its final report certifying that the process of extermination of the insects and rodents is complete.

For clarity, the tenant is allowed to deduct \$50.00 from her September rent to satisfy her retroactive rent abatement, and another \$25.00 should the landlord fail to have a proper extermination of the rental unit by August 31, 2012.

Upon receipt of the written report verifying completion of the extermination of the insects and rodents, the tenant will be obligated to resume payment of the full monthly rent starting the month following receipt of the written report. Example: if the landlord supplies the report on September 3, 2012, the tenant's rent for September is reduced by \$25.00, but the tenant would have to pay the full amount of rent payable for October 2012.

If the tenant is not satisfied with the extermination being complete and continues to withhold rent, the landlord is required to file an application for dispute resolution to prove to the Residential Tenancy Branch that it has complied with this Decision.

Conclusion

For the reasons above, the tenant's monetary claim for \$507.40 is dismissed, without leave to reapply.

The tenant is granted a retroactive rent reduction of \$50.00 for July and August 2012, and a continuing reduction in rent of \$25.00 per month beginning September, 2012 until the landlord has sufficiently proven that the insect and rodent extermination has been completed.

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: August 23, 2012.

Residential Tenancy Branch