Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP PSF RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed for damage or loss under the Act, regulation or tenancy agreement, to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided, to recover the cost of the filing fee from the Landlord, and to obtain the following Orders to have the Landlord:

- comply with the Act, regulation or tenancy agreement
- make emergency repairs for health or safety reasons
- make repairs to the unit, site or property
- provide services or facilities required by law

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted monetary compensation?
2. Should the Landlord be issued Orders to comply with the *Residential Tenancy Act,* provide services or facilities required by law, and make repairs to the unit?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on June 15, 2012 and is set to end on June 15, 2014. Rent is payable on the 15th of each month in the amount of $2,800.00 and on April 29, 2012 the Tenant paid $1,400.00 as the security deposit plus $1,400.00 as the pet deposit.

The parties agreed that a move-in condition inspection was completed with the Landlord and the Tenant's agent; however the condition inspection report form was not fully completed or signed as supported by the copy provided in the Tenant's evidence.

The Tenant submitted a coiled book of documents into evidence which included, among other things, copies of: the tenancy agreement; condition inspection report form; e-mails from April 2012 to August 2012; photos of the rental property; and her written statement explaining the outstanding issues relating to the following:

1) The heat pump air conditioning not working; and
2) The rental unit walls and baseboards were not patched, repaired and repainted prior to her arrival; and
3) Garage door fobs or remotes were not working consistently and the Tenant paid $25.00 to have them repaired. No receipt was provided into evidence; and
4) The main floor patio/terrace doors would not lock, the upstairs patio door would not lock; and both bathroom door locks were not working; and
5) The issues relating to remediation of the water garden/fountain were not disclosed to her prior to entering into the tenancy agreement and as such the draining and ongoing work has diminished the value of her tenancy.

The Landlord confirmed that the Tenant notified her about these five issues by e-mail in July, 2012 shortly after the Tenant arrived.

The Tenant advised that she had agreed to take the rental unit a month before her arrival, paying $2,800.00 in rent to secure a location which she found to be safe and serene for herself and her two children. She noted that her husband was out of the country so she needed a place where she felt safe as well one that provided a serene atmosphere where she could perform her duties as a writer. Unfortunately her experience has been the opposite, she has not felt safe with doors that do not lock and it has not been serene looking at a pile of gravel instead f a water garden.

The Tenant argued that the water garden was a significant factor in her decision to agree to pay a higher than normal rent for a town house. It was also a factor in her decision to secure the unit paying rent while she left it unoccupied for a month before her arrival. Two days after she arrived the water garden was drained and a pile of gravel was dumped in it. She noted that this building was a strata complex and the water garden issues have been ongoing for over five years; therefore the Landlord ought to have known of these issues and should have informed her. She believes the Landlord

used the water garden feature to market the complex and to negotiate a higher than normal rent. She submitted that the value of her tenancy has diminished by $300.00 per month.

The Landlord acknowledged that she had some knowledge of the ongoing issues relating to the water garden. She claimed that she was not fully aware of the issues because she does not read the strata minutes regularly; however she is aware that this is the last year that the garden would be covered under warranty so she suspects it will be filled and drained until it has been repaired. She disputes the Tenant's request for a $300.00 per month rent reduction and argued that the value of the garden would be only about $100.00 per month.

The parties agreed that the status of the required repairs is as follows:

1) Heat pump – broken since arrival on July 12, 2012 – parts arrived week of September 17th and the repair is currently dependant on the Tenant informing the contractor of her schedule.
2) Patching and painting walls and trim – was not completely done by July 12, 2012 and now the parties have agreed that touch up work will be performed once the Tenant informs the Landlord she has finished setting up her possessions.
3) Garage door fobs worked intermittently since July 12, 2012 until mid August when the Tenant paid $25.00 to have them repaired. No receipt was submitted into evidence. The Landlord argued they were working when she gave them to the Tenant so she should not be responsible to pay for repairs.
4) (a) Main floor patio/terrace door locks and bathroom lock– broken from July 12, 2012 to approximately September 1, 2012,
   (b) Upstairs patio door and bathroom lock broken from July 12, 2012 to current – parts have arrived and will be installed in the next couple of days dependent on the Tenant's schedule; and
5) Water garden/fountain – drained July 15, 2012, refilled August 15th and drained again September 14th. There is no anticipated date of repair at this time.

In closing the Landlord submitted that she initiated the repairs once the Tenant informed her of the issues. She disputes that she purposely delayed in completing the work and noted that the completion of such repairs is subject to the availability and delivery of parts, the Tenant's schedule, and her handyman.

The Tenant disputed the Landlord's remarks and argued that the unit was left vacant for the first month and her possessions did not arrive until two months after she did, therefore the Landlord had ample time to get the work completed. It was not until she made her application for dispute resolution that she began to see the Landlord arrange to get the work completed.

Analysis

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

Neither party disputes that four of the five items noted above required repair, as such, I make no findings on the matter of the necessity of the work. There is disputed testimony relating to the required repairs of one item, the key fobs. In the absence of proof that the Tenant paid to have them repaired I find there to be insufficient evidence to support the Tenant's claim. Accordingly I dismiss the Tenant's request for compensation relating to the key fobs.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenant had applied for a rent reduction based on Section 27, I find she has provided no evidence indicating that the landlord had breached this section of the *Act*. As a result, I dismiss this portion of the tenant's application.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the Landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop, or in this case door locks,

wall repairs, and the water garden, would deteriorate occupant comfort and the long term condition of the building and surrounding property.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

I accept the Tenant’s evidence and testimony that a significant factor in her decision to rent this property was the serenity provided by the water garden which runs almost the full length of the complex and which was marketed as a unique feature of the rental complex by the Landlord or her agent. Notwithstanding the Landlord’s submission that she does not regularly read the strata minutes, I agree that the Landlord ought to have disclosed to the Tenant, the ongoing problems with the water garden and the potential that the garden would be drained for repairs.

While the Landlord indicated that the heat pump, locks, and wall repairs were dependent on the ordering and delivery of parts, I accept the Tenant’s assertion that the Landlord delayed in initiating the required repairs until such time as the Tenant sought a remedy through the dispute resolution process.

When determining the amount of compensation proposed by the Tenant I have considered compensation for the general disturbances, the loss of security, and the decreased serenity experienced by the Tenant while awaiting the completion of the repairs.

Neither party provided evidence of how each applicant was specifically impacted, however the Tenant did submitted that she attempted to mitigate her loss of security by contacting the Landlord and lock suppliers as soon as possible. The Tenant has requested a 40% rent reduction up to July 31, 2012 and a future monthly reduction of 10% or $300.00 until the water garden has been repaired. The Landlord argued she took immediate action for the repairs and had to wait for the arrival of parts. As for the value lost to the tenancy for the loss of the water garden the Landlord is of the opinion it should only be a reduction of $100.00 per month.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As such, I make note that the heat pump air conditioner remains broken and was not operational during the hottest months, the main floor door and 1 bathroom door locks were inoperable for approximately six weeks, the upper patio door and 1 bathroom door locks remain inoperable, the upper floor walls were not patched or repainted and now will be spot painted once the Tenant has completed setting up, and the water garden

repair is ongoing. I have also considered the potential of noise disturbances throughout the day, while the work on the water garden is performed and have taken into consideration that the Tenant continued to occupy and have full use of the rental unit and other amenities, such as the gym, which are provided in the complex.

Conclusion

I accept that the parts have been received to complete the repairs to the heat pump, upstairs patio door lock and the bathroom lock, and that the Landlord will work with the Tenant to have these repairs completed. Accordingly, I Order the Landlord to have the repairs on the Tenant's rental unit completed forthwith.

The evidence supports the Landlord is now complying with the Act, regulation, or tenancy agreement by initiating and completing the required repairs. Therefore I decline to issue Orders to have the Landlord comply with the Act or to make emergency repairs.

For the reasons noted above, I find the Tenant is entitled to monetary compensation pursuant to Section 67 for the loss of quiet enjoyment in the amount of **$700.00** up to September 30, 2012 which is approximately 10% of the 2 ½ month's rent paid from July 15, 2012 to September 30, 2012. This award may be deducted off of the Tenant's next two rent payments in equal amounts of $350.00.

I further find the Tenant is entitled to a rent reduction for continued loss of quiet enjoyment in the amount of 5% or **$140.00** per month effective October 1, 2012 and continuing until such time as the water garden repair has been completed.

To clarify the future amounts of rent payable to satisfy the above awards are as follows:

October 1, 2012 rent	**$2,310.00** ($2800.00 – 350.00 – 140.00)
November 1, 2012 rent	**$2,310.00** ($2800.00 – 350.00 – 140.00)
December 1, 2012 rent	**$2,660.00** ($2800.00 – 140.00)

Rent remains at $2,660.00 per month until the water garden has been repaired.

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: September 20, 2012.

Residential Tenancy Branch