



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, ERP, RPL, LRE, OPT, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; to obtain an Order of Possession of the rental unit or site; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the conference call hearing and both gave affirmed testimony. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the tenant withdrew the applications for a monetary order for return of all or part of the pet damage deposit or security deposit, and the application for an Order of Possession of the rental unit or site.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlord ought to be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the landlord ought to be ordered to make repairs to the unit, site or property?
- Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- Has the tenant established an entitlement to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed term tenancy commenced on September 1, 2011, and expired on August 31, 2012. The parties agreed to a further fixed term which expires on August 31, 2013, and the tenant still resides in the rental unit. Rent in the amount of \$995.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$497.50 as well as a pet damage deposit in the amount of \$497.50, and both deposits are still held in trust by the landlord.

The tenant further testified that there are no rental arrears, although the tenant has not paid rent for the month of March, 2013. The tenant made emergency repairs and gave the bills to the landlord on February 27, 2013 which total \$982.00, following which the landlord served the tenant with a 1 Month Notice to End Tenancy. The tenant has provided a copy of an invoice in that amount for roof repairs and flood damage repairs, which includes a cost of \$128.00 for a new shop vac, 14 hours of work at \$48.00 per hour, and other items. A note at the bottom of the invoice states the landlord keeps the humidifier and shop vac.

The tenant further testified that the landlord opened a door to the rental unit when the tenant wasn't there and later advised the tenant that a mess was observed and dog feces. The blinds in the rental unit were closed, so the landlord could not have seen through the windows.

Also, the tenant owns a motorhome and the landlord called a tow truck to have it removed. The tow truck driver asked the tenant if it should be removed, and the tenant denied that it should be removed. The tow truck driver didn't remove it, and the tenant testified that no other tenants or neighbours have complained.

The landlord testified that the parties had had a decent relationship and the landlord paid the tenant for services in the past. Then, in February, the tenant got a dog and another tenant complained.

The tenant had also shown the landlord that the roof was leaking but didn't tell the landlord that the tenant was purchasing a humidifier or a shop vac, which are items on the invoice provided by the tenant. Further, the invoice was never given to the landlord.

The landlord also testified that a contractor provided a letter stating that the tenant was aggressive to him, and the tenant was also aggressive to the landlord. That prompted the landlord to issue a notice to end tenancy, however a copy of the notice has not been provided for this hearing.

The tenant was also told that another contractor would be arriving for making repairs to the roof, and that contractor told the landlord that the tenant was confrontational so the contractor left without making the repairs.

The landlord agrees that the roof requires repairs and agrees to some of the items on the invoice, but testified that previous invoices given by the tenant were at \$20.00 per hour. Further, no receipts have been provided to substantiate the cost of the humidifier or the shop vac, and the landlord was unaware that the tenant was purchasing either. Of the outstanding invoice, the landlord agrees to 3 hours of roof repair for \$144.00; \$25.00 for use of power; \$240.00 for 5 hours of repairs and materials at \$150.00.

The landlord denies ever entering the rental unit without the tenant's permission.

Analysis

Firstly, with respect to the testimony of both parties that a notice to end tenancy was issued, I have no copy of such a notice or any application by the landlord or the tenant with respect to a notice to end tenancy. Therefore, I find that the testimony is irrelevant to these proceedings.

The tenant applies for a monetary order in the amount of \$1,000.00 for payment of the tenant's \$982.00 invoice for repairs the tenant made to the rental unit. The landlord has testified that the invoice was never received and that previous work completed by the tenant was at \$20.00 per hour. The tenant did not dispute that testimony.

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord has failed to comply with the *Act* or the tenancy agreement, unless the

tenant has a right under the *Act* to deduct all or a portion of the rent. The *Act* also states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant makes that claim and gives the landlord a written account accompanied by a receipt for each amount claimed. That section, however, only applies to emergency repairs, which are described in the *Act* as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of the property, and are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or, in prescribed circumstances, a rental unit or residential property. Further, a tenant may have those repairs made only when they are needed and the tenant has made at least 2 attempts to notify the landlord, and the tenant has given the landlord reasonable time to make the repairs. If the landlord does not reimburse the tenant, the tenant may then deduct the amount from rent. However, the reimbursement requirement does not apply if the tenant made the repairs before contacting the landlord or the tenant has not provided the account and receipts for the repairs, or the amount is more than a reasonable cost for the repairs, or the repairs are for damage caused primarily by the actions or neglect of the tenant or the tenant's guests.

In this case, I am satisfied that the tenant has completed work for the landlord and that such repairs were authorized by the landlord. The landlord did not dispute that, and testified that the landlord has paid the tenant for services provided in the past.

Where a person makes an application as against another person, the onus is on the claiming party to prove the claim. The tenant has provided an invoice that is disputed by the landlord. I find that the tenant has not proven the entire claim, and has not provided receipts to substantiate the purchases. The landlord agreed to certain costs, and I find that the tenant is entitled to those costs that were not disputed by the landlord. Therefore, I find that the tenant has established a claim in the amount of \$144.00 for 3 hours of roof repair, \$25.00 for power, \$240.00 for 5 hours of repairs, and \$150.00 for materials, for a total of \$559.00. I further find that the tenant is permitted to reduce one month of rent by that amount, or otherwise recover it. The balance of the tenant's monetary claim is hereby dismissed.

With respect to the tenant's application for an order that the landlord make emergency repairs for health or safety reasons, I have set out the criteria of the *Act* that describes emergency repairs. Neither of the parties have provided any evidence or testimony with respect to what emergency repairs are needed, other than the fact that the landlord agrees that the roof needs repair. The tenant made some of those repairs, and I have no evidence to support what further repairs are required or if they are classified as

emergency repairs under the *Act*. Therefore, the tenant's application for an order that the landlord make emergency repairs for health or safety reasons is hereby dismissed.

Similarly, I have no evidence or testimony before me to establish what repairs to the unit, site or property are warranted, and that portion of the tenant's application is hereby dismissed.

The landlord testified that the landlord has never entered the rental unit contrary to the *Residential Tenancy Act*, and I find that the tenant has failed to establish that the landlord has entered. There is no evidence to substantiate that claim, and the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit is also dismissed.

In summary, I find that the tenant has established a monetary claim as against the landlord in the amount of \$559.00. Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order that the tenant be permitted to recover the sum of \$609.00 by way of a rent reduction, or otherwise recover that amount, and I grant a monetary order in that amount in favour of the tenant. The balance of the tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$609.00. I further order that the tenant be permitted to reduce rent payable by that amount or the amount may be otherwise recovered.

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: April 16, 2013

Residential Tenancy Branch

