



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mosaico Housing Co-Operative &
Baywest
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, ERP, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities set aside, a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, an order to have the landlord conduct emergency repairs for health and safety reasons and an order to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, the regulation or the tenancy agreement?

Background and Evidence

The tenancy began on or about October 1, 2012. Rent in the amount of \$904.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$452.00. At the outset of the hearing both parties agreed that the tenant has paid up all outstanding rent within the required time and that the tenancy has been re-instated; accordingly the notice to end tenancy dated July 8, 2013 is of no effect or force and is hereby set aside.

The tenant gave the following testimony:

The tenant stated the unit has had water leaking into it during the months of October and November. The tenant stated that the patio has been unusable since the water damage. The tenant stated that the water has also caused damage in her unit. The tenant stated that the landlord did not charge the tenants rent for the months of November and December, however the tenants used one months' worth of rent to hire someone to help mitigate the damage. The tenant stated that they feel they have really only received one month's free rent and seek further compensation. The tenant stated that they wish to have their rent reduced by \$200.00 per month until all repairs have been completed. The tenant stated that she is also seeking to be compensated for the three months prior to this hearing.

The landlord gave the following testimony:

The landlord stated that they have taken every possible step to mitigate the damages and to expedite repairs. The landlord advised that as a housing co-operative they are subject to more stringent building standards and business requirements than most landlords. The landlord stated that the building is in the process of a large "building rehabilitation project" and have been recently granted 3.5 million dollars to have the work done. The landlord stated that all work required will be done. The landlord stated that they have scheduled work to be done at times to remedy the problem but have been met with foul language and abuse from the tenants. The landlord also stated that the tenants have not been cooperative in allowing work to be conducted in a timely fashion and have outright refused access to some repair men. The landlord stated that they have compensated the tenant by not charging them rent for the months of November and December and feel that is sufficient.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant did not provide sufficient evidence to meet all of the above criteria, specifically #2 and #3. The landlord provided extensive disputing evidence to show steps to mitigate and minimize the impact on the tenants. Based on all of the above, and on the balance of probabilities the tenant has not satisfied me of her claim and I therefore dismiss her claim for a rent reduction, I also dismiss her claim for a monetary order for compensation and further dismiss her claim for an order to have the landlord conduct repairs. I am satisfied that the landlord is conducting their business in a reasonable and appropriate manner.

As the tenant has not been completely successful in her application I decline to award the recovery of the filing fee, the tenant must bear that cost.

Conclusion

The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2013 is set aside; the remainder of the tenants' application is dismissed.

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 13, 2013

Residential Tenancy Branch