



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 an application by the tenant for the following orders:

- A monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- An order allowing the tenant to reduce the rent for repairs, facilities agreed upon but not provided; and
- An order that the tenant recover the filing fee from the landlord for the cost of this application.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented herself and the tenant (II) was represented by his agent who is a regular guest and brother of the tenant but is not listed on the tenancy agreement. The agent (AI) is referred to as “tenant” in this decision.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other’s evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The tenant has made application for an order directing the landlord to reduce rent. However, based on the evidence and testimony of the tenant, he is seeking compensation in the form of reduced rent for past periods in the tenancy, when he allegedly did not have the facilities that were promised to him by the landlord. The parties have attended prior hearings on May 29 and June 29, 2020.

The hearing on May 29, 2020 dealt with applications of both the landlord and the tenant.

The landlord's application was for unpaid rent and an order of possession, both of which were granted to her. The tenant's application was for compensation for the loss of use of facilities that were promised to him. The tenant's application was dismissed with leave to reapply.

The hearing on June 29, 2020 dealt with an application by the tenant for an order directing the landlord to carry out repairs. The tenant was successful in his application and the landlord was ordered to carry out the required repairs.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be Decided

Is the tenant entitled to compensation?

Did the landlord respond to the tenant's complaints in a timely manner?

Background and Evidence

The background facts are generally undisputed. The parties agreed that the tenancy started in June 2015. The monthly rent is \$2,460.00 payable on the first of each month. The rental unit is a one bedroom furnished unit.

The tenant stated that right from the start of tenancy, the washing machine was problematic. The details of the sequence of events was discussed and the parties agreed to the following:

In October 2015, the tenant complained about the washing machine being noisy and moving around while in use. The landlord sent in a technician who changed the shocks. The landlord stated that she did not hear back from the tenant for almost two years after the repair was completed.

In July 2017 the tenant contacted the landlord to inform her that the washing machine was sometimes noisy while in use. The landlord attended the unit and found a box in the vicinity of the machine which made rattling noises when the machine was in use. The landlord moved the box and tested the machine and it was no longer noisy. The landlord stated that she did not hear back from the tenant regarding the performance of the washing machine for two years.

In July 2019, the tenant complained that the washing machine was noisy and moved around a lot while in use. The landlord sent a repair technician who identified the cause of the problem and fixed it. After the repair, the tenant informed the landlord that the movement had stopped but the noise had not. The landlord requested a video of the noise to run it by the technician. The tenant did not send one.

On September 16, 2019, the landlord contacted the tenant by text message asking if all was well with the washing machine. The tenant replied that it was still noisy. The landlord asked for a video and did not receive one until May 2020, approximately nine months later, when the tenant filed evidence for the hearing on May 29, 2020.

The tenant stated that the reason for the delay in providing the landlord with a video is that he needed help to shoot the video and was unable to find someone who could help. I asked the tenant whether his brother (II) who is the tenant named on the tenancy agreement was not available to help and he replied that he (AI) stays over in the unit when his brother (II) is away, because the rental unit is a one-bedroom unit.

The washing machine was replaced in July 2020 and is not a problem anymore. The tenant is seeking compensation in the amount of a rent reduction of \$250.00 per month for a problematic washing machine for the first five years of tenancy. The tenant's claim for compensation is \$15,000.00 for a facility that he alleges was not provided to him.

The tenant stated that right from the start of tenancy the bed was very low and due to his medical condition, he was uncomfortable using the bed. The tenant stated that in July 2018, he suffered a fall from the bed and was injured. This caused him to miss 10 days of work for the period of July 10 to July 21, 2018.

The tenant is claiming compensation in the amount of \$3,000.00. The tenant stated that he earns \$300.00 per day and missed ten days of work due to injuries sustained in a fall off the bed. The tenant did not file any proof of his wages or proof that he missed work for 10 days. The tenant filed doctors' notes and photographs of his injuries.

The doctor's note states that the injuries are to his left arm, shoulder and face. The photographs show injuries to the back of his leg, behind the knee and other areas. The injuries on the photograph are not consistent with the doctor's report and seem unlikely to have been sustained from a fall off a low bed onto carpet.

The agent for the tenant AI confirmed that he was the one that fell off the bed and sustained injuries and that it was not the tenant II who fell.

Analysis

Based on the documents filed into evidence and the oral testimony of both parties, I find as follows:

Compensation for a problematic washing machine - \$15,000

Both parties agreed to the following sequence of events. The tenant reported the problem in October 2015 and the landlord acted on the complaint in a timely manner. The next time the tenant contacted the landlord was almost two years later, in July 2017 and the landlord again acted in a timely manner to address the complaint. The landlord did not hear back from the tenant until a further two years later, in July 2019 at which time she had the problem resolved in a timely manner.

On September 16, 2019, the landlord contacted the tenant to find out how the washing machine was working, and he replied on September 18, 2019 saying that the machine was still noisy sometimes. The landlord requested the tenant to send her a video that she would send to the technician. The landlord did not hear back from the tenant. The tenant agreed that he did not send a video until May 2020 when he included it in his evidence for the hearing that took place on May 29, 2020.

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and 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, make it suitable for occupation by a tenant.

In this case, I find that the landlord acted responsibly and responded to the complaints of the tenant in a timely manner. The tenant made the first complaint in October 2015, the second complaint two years later, in September 2017 and the third complaint two years later in July 2019. I find that the landlord responded to all complaints in a timely manner and that the tenant had the use of the machine through out the tenancy.

In addition, on September 2019, the landlord contacted the tenant to check on the performance of the machine and requested a video of the noise that the tenant complained about. The tenant provided the video some nine months later along with his rebuttal for the hearing on May 29, 2020.

Based on the above, I find that the tenant has not proven negligence on the part of the landlord and has also not proven that he was without the use of the washing machine through the tenancy of 5 plus years. Accordingly, the tenant's claim for compensation in the amount of \$15,000.00 is dismissed without leave to reapply.

Compensation for fall off the bed - \$3,000.00

The tenant is also claiming \$3,000.00 for the loss of income he suffered when he fell off the bed and had to miss work. I find that this claim has no merit for the following reasons:

1. The tenant did not fall off the bed, his brother and agent AI did. The landlord is not responsible for the well being of the tenant's guests.
2. The tenant agreed that the bed was the same one that was part of the furnished suite at the start of tenancy.
3. The tenant had medical problems with his back at the start of tenancy and chose to rent the unit with the furnished bed.
4. At the tenant's request, the landlord paid \$857.45 for a replacement mattress and box spring in April 2016. The tenant chose the mattress and box spring.
5. The photographs of the injuries sustained in the alleged fall do not match the doctor's report and appear to be inconsistent with a fall off a low bed, onto carpet.
6. Even if I find the landlord liable for the injury, which I do not, the tenant did not file any evidence to support his wages of \$300.00 per day or of his time off work.

Based on the above, the tenant's claim for \$3,000.00 is dismissed without leave to reapply. Since the tenant has not proven his case, he must bear the cost of filing his application.

Conclusion

The tenant's application is dismissed in its entirety.

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: November 26, 2020

Residential Tenancy Branch