



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, ERP, PSF, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order that the landlord perform emergency repairs and an order that the landlord provide services pursuant to the tenancy agreement. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Should the landlord be ordered to perform repairs?

Should the landlord be ordered to provide services pursuant to the tenancy agreement?

Is the tenant entitled to a monetary order for services not provided and for loss of quiet enjoyment?

Background and Evidence

The tenancy began in February 2007. The tenant pays \$660.00 per month in rent, which includes heat. The first issue for which the tenant seeks compensation is lack of heat. The tenant testified that in late May 2008 he discovered that the heat had been turned off and complained to the landlord, who turned the heat back on. Over the course of the next several weeks, the tenant made several complaints to the landlord about the lack of heat and each time the heat was turned back on. At some point in June the landlord stopped turning the heat back on and suggested that the tenant purchase and use an electric space heater. On June 18 she provided the tenant with a form on which he could keep track of the dates and times in which he used the space heater and offered to pay any difference in his electric bill from the same billing period the previous year. The tenant testified that he discovered that in 2007 the landlord had also turned the heat off during the summer, but that he did not notice it during that summer as he did not require heat during that time period.

The landlord acknowledged that heat was turned off during the summer and testified that the building is heated with a large boiler. While each of the rental units has a control enabling them to regulate the heat to a certain degree, the building and heating system are older and when the boiler is on, it heats the entire building. The landlord testified that she fielded complaints from other tenants about the heat being excessive. The landlord testified that although she turned on the boiler several times in response to the tenant's complaints, the first of which she received on May 22, 2008, she had to stop because of the risk of damaging the boiler. The landlord further testified that she kept records of when the boiler was turned on and off and that it was turned on again for the fall on August 28. The landlord testified that she does not turn off the boiler on a specific date each year, but generally turns it off when the temperature reaches 25°.

The second issue raised by the tenant dealt with pigeons which he claimed were nesting on the building. The tenant testified that beginning in April 2007, he complained to the landlord that pigeons were roosting on an upper floor or under the roof of the building and that their feces was falling on his balcony. The tenant testified that he complained to the landlord at least 3 times in 2007, which included a request that his balcony be power washed to remove the fecal matter. The tenant testified that the problem has continued since that time and that while his balcony was power washed in January 2008, the fact that the pigeons remained meant that feces continued to drop on the balcony after that time. The tenant testified that he complained in writing to the landlord on August 18, 2008 and entered into evidence a copy of that letter. The letter alleges that the residents of the apartment immediately above the rental unit were feeding pigeons and that pigeon feces was falling onto the tenant's balcony. The tenant entered into evidence photographs showing pigeons on the balcony of the upper apartment, crumbs which he alleges were thrown by the residents of the upper unit onto the lawn of the building, and pigeon feces on his balcony and other areas around the building. The tenant also submitted evidence as to the potential health risks associated with pigeon feces, claiming that the droppings were a biohazard. The tenant did not provide any evidence with respect to any impact the droppings have had on his health or that of his family.

The landlord acknowledged having received 3 complaints from the tenant in 2007, the

first of which was on May 30, 2007 and the last of which was in July of that year. The landlord testified that in response to the tenant's complaints in 2007, nests were removed, a pest control company put up wire prongs on the roof and owl figurines were placed on the roof in an attempt to discourage pigeons from roosting. The landlord testified that the tenant did not complain further until the letter of August 18, 2008. The landlord further testified that she has had discussions with the neighbour in the apartment immediately above that of the tenant and that the neighbour denied having fed pigeons and told her that the tenant had fed pigeons on more than one occasion.

Analysis

With respect to the first claim for compensation for lack of heat, I find that the landlord is contractually obligated to provide heat to the tenant throughout the year. The tenant claims \$30.00 per month for 8 months in which the heat was turned off; May through September 2007 inclusive and May through September 2008 inclusive. The tenant acknowledged that he did not notice that the heat was turned off in 2007. When a breach of contract occurs, the party who did not breach the contract is entitled to be made whole. In order to be made whole, the offended party must establish that a loss has occurred. As the tenant did not notice that heat was unavailable during 2007, I find that the tenant has failed to prove that he suffered any loss during that year and dismiss his claim for compensation for that year. As for 2008, I find that the tenant did suffer some loss. While I appreciate that the nature of the heating system prevents the landlord from running the boiler year round, I find that the tenant was entitled to heat during that time period. I recognize that the landlord attempted to compensate the tenant for the withdrawal of heat during the summer and find that the landlord's proposed solution was entirely reasonable except for the fact that she expected the tenant to incur the cost of providing a space heater. The tenant did not enter into the tenancy with the understanding that he would be required to purchase space heaters for use during the summer months. I find that the tenant is entitled to compensation for those months in which he was without heat. Although the parties did not identify the specific date on which the landlord stopped turning on the boiler in response to the tenant's complaints, it seems from the evidence that this must have occurred in mid-June. I accept the landlord's testimony that the boiler was started again on August 28

and find that heat was turned off completely from June 15 to August 28. As heat would not have been required every day during the summer, I find that the tenant's claim for \$30.00 per month in compensation is excessive and find that the tenant is entitled to recover \$15.00 for what I find to be the two weeks in June in which he was without heat and \$15.00 for each of the full months of July and August, which would have been warmer months with less heat required. In the future, if the landlord withdraws the service of heat for the summer months, the landlord must either compensate the tenant by paying him \$15.00 per month or by providing him with space heaters and determining a reasonable amount in compensation as the tenant has to pay for the electricity used to run the space heaters. The tenant is awarded a total of \$45.00 for this part of his claim.

I dismiss the tenant's claim for an order that the landlord provide services as the formula for compensation as provided above will adequately address the issue.

As for the tenant's claim for compensation for loss of quiet enjoyment due to pigeon feces, the tenant claims \$100.00 per month for 9 months in 2007 and \$100.00 per month for the first 9 months of 2008. With respect to the 2007 claim, The landlord's testimony and evidence shows that a pest control company was brought in to address the pigeon problem in July of that year. The landlord did not seek to further address the problem in 2007 because the tenant did make further complaints in that year. I find that in 2007 the landlord acted within a reasonable amount of time to address the problem. I further find that although the tenant's balcony was not pressure washed until January of 2008, this delay did not cause a loss of quiet enjoyment or loss of use of the balcony to an extent that it would attract damages. The evidence before me shows that the tenant did not make a complaint about pigeons in 2008 until August 18 and he filed his claim just 11 days later. I find that the tenant has not established an entitlement to compensation as he has failed to prove that he gave the landlord adequate opportunity to address the problem when it resurfaced in 2008. The tenant's claim is dismissed.

The tenant also claims for an order that the landlord perform repairs. Having viewed the photographs provided by the tenant, it is clear that there is a problem with pigeons defecating on and around his balcony. **I order the landlord to employ a professional**

pest control company to address the issue of pigeons around the rental unit no later than November 15, 2008. I make no order with respect to how the landlord should deal with the tenants in the apartment above the rental unit because I find that the tenant has failed to prove that those tenants are deliberately feeding the pigeons.

The tenant also seeks to recover the \$50.00 filing fee paid to bring this application. As the tenant's claim has been substantially unsuccessful in his claim, I find it appropriate to divide the cost of the filing fee between the parties and I award the tenant \$25.00.

Conclusion

The tenant is entitled to a monetary award of \$70.00. This award may be deducted from future rent owed to the landlord.

Dated October 07, 2008.