

DECISION

Dispute Codes

For the tenants CNR, MNR, MNDC, RR, FF, O

For the landlord – OPR, MNR, MNDC, FF

Introduction

This decision was set to deal with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were due to be heard together.

The tenants seek a Monetary Order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* and to recover the filing fee. The tenants have moved from the rental property and therefore have withdrawn their application to cancel the Notice to End Tenancy and for an Order to reduce rent for services and facilities agreed upon but not provided. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* and to recover the filing fee.

The tenant served the landlord in person on January 25, 2010 with a copy of the application and a Notice of the Hearing. The tenants served the landlord with an amended copy of the application on March 03, 2010. The landlord served the tenants by posting the Application and Notice of Hearing on the door on March 01, 2010 after the tenants had vacated the rental property. The tenants state that they did not receive the landlords hearing package or evidence for his application. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. I find the tenants were not properly served with the landlords' application and notice of hearing. To find hear an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. By the landlords own admission he posted the Notice of hearing and his evidence to the tenants door after they had moved out. Therefore, I find that the tenants were not serviced with the hearing documents in accordance with the section 89 of the *Act* and I dismiss the landlord's application with leave to reapply.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the costs for emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?

Background and Evidence

Both Parties agree that this month to month tenancy started on February 15, 2009 and ended on March 01, 2010. Rent for this property was \$1,800.00 per month and was due on the first of each month. The tenants states that they paid \$900.00 for the security deposit. The landlord states that no security deposit was paid.

The tenants claim that they had to make some emergency repairs to the pump for the septic system as it flooded their basement. After the first flood occurred the Male tenant had to lift the plate covering the pump and clear the blockage with their hands the switch was smoking and he was worried it may cause a fire. The pump kept malfunctioning and burned the plug out which stopped the pump working and as a result flooding occurred. The tenants testify that on this first occasion they notified the landlord who did not deal with the problem. They tenants state that they believed this was a one off problem until they were told by neighbours that the basement flooded each year. They spoke to the landlord concerning these problems but he did not take steps to rectify the issues with the malfunctioning pump. The tenants state that they only used normal toilet paper in the toilet and did not put paper towels or other objects down the sinks or toilets.

The tenants testify that the pump stopped working again and they incurred another flood. On both these occasions they paid for the restoration work themselves for the cost of cleaning the carpets and basement. The tenants have provided receipts for renting a machine to suck the

water up at a cost of \$57.01 and \$34.67. The tenants claim they gave one of the receipts to the landlord for reimbursement but he did not reimburse them. The tenants found the vent pipe in the pump room was not vented outside and caused fumes to fill the house from the septic system.

The tenants testify that they experienced a third flood and on this occasion they had to pull up the carpet. They had sublet the basement suite and their tenants moved out due to health issues concerning the waste water from the septic system flooding their living space. On this occasion the tenants hired a carpet cleaner to bring a more powerful machine to suck the water up. This cost \$492.80 and the tenants have provided this receipt. The tenants are also claiming \$540.00 for a total of 36.00 hours at \$15.00 per hour cleaning time plus cleaning supplies for dealing with all three floods. The tenants sublet the basement again to new tenants who also had to move out due to the flooding. The tenants claim compensation from the landlord for their loss of rental income for the basement.

The tenants are also claiming they had to deal with the issues with the pump and cleaning out raw sewage from this area each time the pump failed. This work was done by the male tenant and the tenants seek compensation of \$350.00.

The tenants claim that they had items of personal belongings stored in the pump room which became damaged due to the flood. There was a wedding dress valued at \$500.00 eight boxes of photographs valued at \$250.00 and bags of laundry, clothing, and bedding at a value of \$300.00. The tenants state they attempted to wash the items but they were damaged by mould and the odour of sewage could not be removed. The tenants state that they did not have contents insurance for their belongings and seek compensation from the landlord for these items.

The tenants seek to recover one months' rent in compensation for the problems they encountered with the pump and raw sewage of \$1,800.00. The tenants also claim their Hydro costs escalated during the months the pump was working overtime. They have provided Hydro statements for the period they rented the property which show some escalation in usage for April and December, 2009 and February, 2010. The tenants have averaged the costs out at \$2.00 per day for the over usage of the pump for six months at a cost of \$360.00. The tenants also seek compensation for vet bills as they believe the landlord reported them to the SPCA

who came to inspect the tenant's animals. The tenants had to pay for some treatment for the animals of \$634.20. The tenants also claim \$100.00 in fees incurred in filing their application.

The landlord disputes the tenant's testimony. The landlord testifies that the tenants gave him a receipt for carpet cleaning on November 24, 2009 for \$73.87. The landlord claims the tenants wanted him to pay to have the carpets cleaned every time they got new tenants in the basement suite.

The landlord claims the pump was blocked by the tenants throwing paper towels in the toilet. The landlord argues that it is the actions of the tenants and their sublet tenants that caused the pump to fail and flood the basement. The landlord argues that the male tenant is not qualified to deal with the pump and should not have opened the lid without permission. The problem should have been dealt with by a certified plumber.

The landlord claims the tenants Hydro bills went up because they rented trailers on the site to campers and hooked up Hydro for these trailers. These campers were using heat and light from the tenants Hydro.

The landlord states that the tenants kept animals on the property and did not care for them correctly. The SPCA went round and carried out their investigations.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that a) complies with the health, safety and housing standards required by law and b) having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant. I find the tenants have not provided sufficient evidence to support their claim for money owed for emergency repairs as they carried out the repairs themselves. However, I do find that they incurred costs to clean the basement area after the flooding occurred.

I find the landlord did not act diligently when the tenants reported the problems with the pump to him and although the landlord argues the tenants should not have attempted to make their own

repairs and should have called a qualified plumber to repair the pump the landlord has not provided any evidence to show that he carried out his own investigation or contacted a qualified person to inspect the pump or make any necessary repairs to prevent further flooding. I find the tenants evidence is sufficient to support their claim that the pump malfunctioned repeatedly rather than the landlords' arguments that it was the tenants fault for putting paper towels in the toilet which caused the pump to malfunction. Consequently, I find the tenants are entitled to recover their costs for cleaning the basement and for hiring the machines to suck the flood water from the basement and the costs incurred to hire a carpet cleaner to use a more powerful machine to suck the flood water away from the basement to a total cost of **\$1,124.48** pursuant to section 67 of the *Act*.

I find the tenants are entitled to a claim for compensation of **\$350.00** for having to deal with cleaning the pump and attempting to rectify the problem after the landlord failed to take action when notified about the problems. I further find the tenants are entitled to recover the equivalent of one months' rent in compensation for the ongoing issues with flooding which reduced their peace and quiet enjoyment of the living accommodation due to the landlord not acting in compliance with section 32(1) of the *Act* to the amount of **\$1,800.00** pursuant to section 32,(1) and 67 of the *Act*.

I find the tenants had sublet the basement to other tenants and as a result they would be the landlords of these tenants. In this instance the landlord is not responsible for any loss of rental income from tenants living in the basement as he is not their landlord. Therefore, this section of their claim is dismissed.

With regard to the tenants claim for the loss of personal belongings; I have applied a test for loss or damage. In this instance the burden of proof is on the tenants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred. I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted any evidence to prove the existence of the wedding dress, eight boxes of photographs, laundry and bedding loss; while they have proven that the landlord did not comply with section 32 of the *Act* they have not established the actual monetary amount of the loss or

what steps they took to mitigate the damage or loss. Consequently, this section of their claim is dismissed.

With regard to the tenants claim for increased Hydro costs; I find the tenants agree that they did rent trailers to other tenants and the hydro was hooked up to these trailers for these tenants use. Therefore, I support the landlords' arguments that the tenants provided Hydro to sublet tenants. Therefore, it is my decision that the tenants they have not provided me with sufficient evidence to support their claim that the increase Hydro costs were due to the faulty pump. This section of their claim is dismissed.

With regards to the tenants claim for compensation for vet bills; I find this claim has no merit. If the tenants kept animals on the property it is the responsibility of the tenants to pay for any treatment specified by the vet or ordered by the SPCA and the landlord is not liable to reimburse the tenants for these costs. Consequently this section of the tenants claim is dismissed.

I find the tenants are entitled to recover the \$50.00 filing fee from the landlord pursuant to section 72(1) of the *Act* but have provided insufficient evidence to support the remainder of their claim for costs relating to filing this Application.

A Monetary Order has been issued to the tenants for the following amount.

Cleaning costs and hire of machines and carpet cleaner	\$1,124.48
One months' rent in compensation	\$1,800.00
Filing fee	\$50.00
Total amount due to the tenants	\$3,324.48

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$3,324.48**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords application is dismissed with leave to reapply.

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: March 08, 2010.

Dispute Resolution Officer