

## **DECISION**

**Dispute Codes**      MNR, MNDC, MNSD, ERP, RP, FF

### **Introduction**

This hearing was convened by conference call on this date to deal with the tenant's application for reimbursement from the landlord for the cost of emergency repairs; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for return of all or part of the pet damage deposit and 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 allowing a tenant to reduce rent for repairs, services or 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.

The tenant appeared and gave evidence, and provided written evidence in advance of the hearing.

Despite being served with the notice of hearing documents by registered mail on March 1, 2010, the landlord did not attend the conference call hearing.

At the outset of the hearing, the tenant advised that she vacated the unit pursuant to a Mutual Agreement to End a Tenancy signed by both parties on February 20, 2010, a copy of which was provided as evidence in advance of the hearing. The tenant vacated the unit on March 31, 2010, and therefore the applications for an order that the landlord make emergency repairs for health or safety reasons, as well as the application for an order that the landlord make repairs to the unit, and the application to allow the tenant to reduce rent for repairs, services or facilities, are hereby withdrawn and dismissed without leave to reapply.

Further, the application for return of the security deposit and pet damage deposit is premature, in that the *Residential Tenancy Act* permits the landlord 15 days from the

date the landlord receives the forwarding address from the tenant in writing to return those deposits.

This decision deals only with the application for a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for reimbursement of the cost of emergency repairs?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

This tenancy began on June 1, 2009 as a fixed term tenancy to expire on May 31, 2010. On May 10, 2009, the landlord collected a security deposit in the amount of \$2,250.00 as well as a pet damage deposit in the amount of \$2,250.00. Rent in the amount of \$4,500.00 is payable on the 1<sup>st</sup> of each month, and there are no rental arrears. The rented unit is a 3500 square foot, 3 level townhouse.

The tenant testified, and provided copies of printed emails, that she had tried numerous times to contact the landlord, but was unable to reach her. The tenant had no other contact information or an emergency or alternate method to contact the landlord. The tenant sent the landlord a letter on November 30, 2009 requesting an inspection for pest elimination. She found a new email address for her during approximately December, 2009 and contacted the landlord about the pest problem and mould in the unit. The tenant and her father had traced a rotten smell to the sauna floor. The tenant had a professional inspection done at the beginning of January, 2010, which resulted in a cost of \$682.50 which was paid by the tenant, and a multi-page report which described the situation as “high fungal CFU density fungal contamination with elevated risk to health

with exposure of sensitive individuals and elevated (fungal contamination evident) – professional remediation required” and estimates the remediation and disposal costs to be \$4,600.00. Rather than pay the remediation and disposal costs, the tenant bought two air purifiers and placed one at the top of the stairs to prevent the mould smell from coming up into the living area of the unit, and one at the bottom of the stairs near the mouldy area. The cost of those humidifiers was \$335.99 for one and \$110.23 for the other, including taxes.

The repairs required the tradesman to take apart the sauna and deal with a sewage/drainage, which took weeks. The tenant dealt with each occasion, and then asked the landlord to remove the construction debris, but the landlord moved it all into the sauna, which was not put back to its original state, and rendered it unusable.

The tenant also testified that the toilet did not work in the master ensuite, which she had to have repaired, and then it malfunctioned again, but did not provide receipts or any evidence of the cost associated with those repairs. The landlord did deal with the toilet issue, but the new toilet did not arrive until March 11, 2010.

The tenant also testified that the fridge was not working. It is described as a sub-zero fridge that was 27 years old. The landlord again didn't respond to the tenant's emails and phone calls, so the tenant called a repair person, who advised that it would require repairs that would likely be required again and again, or replacing. In January, the landlord told the tenant that she would buy a new one, but did not want to deal with it until she returned from vacation in the U.S. The new fridge finally arrived on February 25, 2010, but couldn't be installed until a professional tradesperson removed the old one. The tenant waited several days for that to happen, and finally, the new one was installed, but it also malfunctioned and got warmer instead of colder. Another fridge arrived within the first 4 days of March but could not be installed until the other one had been professionally removed. The tenant is claiming an estimate of \$180.00 in spoiled food as well as \$150.00 that she paid for the connection fee.

The tenant testified that none of the issues were dealt with by the landlord, and that the tenant had to take time off from work to deal with trades people and service personnel,

taking delivery of the fridges and purchasing small fridges to replace the ones that did not work, and is claiming 10 hours at \$50.00 per hour for that time for loss of work hours that she feels ought to have been dealt with by the landlord.

The tenant further testified that a move-in inspection was done, but the landlord did not attend. The landlord sent an agent from Accent Management, and a different agency for the move-out inspection. The tenant provided her forwarding address to the landlord in writing on that move-out inspection.

The tenant also testified that she provided a Mutual Agreement to End Tenancy to the landlord, but the landlord did not sign and return the form as agreed, however, the landlord did take steps to have the unit re-rented by sending a rental agent to view it. The rental agent did not have identification, the landlord had not signed the Mutual Agreement to End Tenancy, and therefore, the tenant did not allow the agent to view the residence. The tenant received the document, signed by the landlord, dated February 20, 2010, and moved out of the rental premises on March 31, 2010.

### **Analysis**

The four-part test for damages consists of the following:

- that the party prove the damage or loss;
- that the party prove that the damage or loss occurred because of a breach of the *Act* or the tenancy agreement;
- that the party prove the amounts claimed;
- that the party proves attempts to reduce, or mitigate the damage.

I find, in the circumstances that the tenant has satisfied all four parts of the test. Rather than pay the \$4,600.00 for remediation and disposal costs related to the fungal infestation in the unit, the tenant bought humidifiers to make the unit liveable. Had the landlord dealt with it, and made herself available to the tenant, the tenant would not have incurred those costs. Further, the tenant contacted the landlord who did not

respond to several requests of the tenant, nor did the landlord provide an emergency number for the tenant to reach her.

The *Residential Tenancy Act* states as follows:

**32 (1)** 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, makes it suitable for occupation by a tenant.

Further,

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I also find that the tenant was inconvenienced and was required to take time away from her work, at a significant cost to her, in order to deal with trades people and delivery of the fridges and the toilet. The tenant also provided receipts for all items that she is claiming.

I find that the tenant would not have bought the air purifiers or the fridges if the repairs had been addressed by the landlord, and therefore, the tenant is entitled to compensation for those items. The cost of the air purifiers, as claimed by the tenant was \$446.22, which I order be repaid by the landlord. I make a similar award for the bar fridge as claimed at \$188.97.

I do find that the landlord ought to have dealt with the pest and mould issues, and the tenant lost the sauna and use of the basement of the unit due to the mouldy smell, and for that claim, I award \$682.50. I also award \$180.00 to the tenant for perished fridge and freezer items and \$150.00 for the connection fee for the sub-zero fridge. I also award \$500.00 for loss of work associated with the repairs and delivery of items.

The landlord is required to return the security deposit and pet deposit within 15 days of receiving the tenant's forwarding address in writing, or make application for dispute resolution within that time, or the tenant may make application for double the return of those deposits, and I make no orders with respect to those amounts at this time.

### **Conclusion**

I hereby order that the landlord pay to the tenant the sum of \$2,147.69. The tenant is also entitled to recover the filing fee for the cost of this application in the amount of \$100.00.

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 14, 2010.

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Dispute Resolution Officer