



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and an Order to have the Landlord make emergency repairs for health or safety reason.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on October 27, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Landlord is deemed to be served the hearing documents on November 1, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*. The Landlord confirmed receipt of the hearing documents and the Tenant's evidence.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Landlord confirmed she did not send a copy of her evidence to the Tenant prior to today's hearing.

Issues(s) to be Decided

1. Is the Tenant entitled to monetary compensation?
2. Are the Landlords Ordered to make emergency repairs to the rental unit?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal month to month tenancy agreement. Rent is payable on the first of each month in the amount of \$500.00 and the Tenant paid a security deposit of \$250.00 on April 8, 2010. The parties have been before dispute resolution on September 14, 2010, and October 15, 2010, whereby the parties agreed the Tenant would vacate the unit no later than November 30, 2010 (after the Landlord previously served the Tenant a 2 Month Notice to End Tenancy) and the Tenant would not pay rent for November 2010 as compensation for receiving the Notice.

The Tenant testified her tenancy did not begin until May 1, 2010 while the Landlord argued the tenancy began April 30, 2010. The Tenant advised that her previous two applications for dispute resolution involved her request to have the Landlord make emergency repairs to the rental unit. However, in the confusion of service procedures and determining the issues surrounding the 2 Month Notice her requests for emergency repairs were not dealt with by the previous two Dispute Resolution Officers.

Witness (1) testified that she has visited the rental unit on several occasions and each time there was sewage backed up in the shower and she saw water leaking out of the kitchen tap and under the kitchen sink. She also commented on how dark it was outside of the rental unit.

Witness (2) testified that he is a retired truck driver / tire man and that he has performed his own plumbing and electrical work over the years. He has attended the rental unit where he has seen feces in the shower, just as displayed in the Tenant's photos. He has witnessed sewage backing up into the Tenant's toilet each time the upstairs toilet is flushed. He described the kitchen water pipes to be constructed out of plastic pipes which are crimped to the fittings and he has seen water leaking both under the sink and above the counter. He also knows that the breakers continue to trip off and that to his knowledge when breakers blow continuously it weakens them requiring them to be replaced. He is aware that the upstairs tenants had two large air conditioners plugged

in which caused the breakers to blow every time the tenant attempted to use any power. He stated that these issues were not the fault of the Tenant.

The Tenant stated she is seeking \$875.00 as compensation equal to 25% of her rent for each month that she has had to put up with feces in her shower, spilling out of the toilet, causing her to have to clean it up regularly. She stated that the smell is awful. At the beginning of her tenancy she only had to clean it up about twice per month however now it seems to be getting worse. She has asked nicely to the Landlord on several occasions to fix the sewage and water problems. She said that the water was fixed once and a plumber attended on one occasion to attempt to fix the sewage problem however he has only made things worse. Then when she smelt a burning smell coming from the breakers the Landlord had someone attend right away to replace the breaker. The Landlord took the Tenant's outside lights away which the Tenant had set up on a timer so she would not have to walk into the rental unit in the dark. She confirmed receiving the two letters from the Landlord on August 31, 2010 when the 2 Month Notice was served. The Tenant stated that the outlet in the bathroom is not the cause of this problem as the sewage pump runs constantly. Every time the upstairs does laundry, uses the dishwasher, showers or flushes their toilet, septic backs up into her bathroom. The Tenant stated that the Landlord told her that she does not want to hear from her anymore because she is just costing the Landlord money. The Landlord no longer answers her phone when the Tenant calls so she is left to clean up the septic when it backs up until she moves out at the end of this month.

The Landlord testified that the Tenant was told at the onset of the tenancy that it was reduced rent because the suite is only capable to handle one person. She stated the suite is only seven years old and the Tenant's shower and toilet operate on a pump system which is hooked up to the outlet in the bathroom which is a breaker reset switch. She argued that if the Tenant plugs anything into this bathroom outlet it will kick the breaker off and the pump will not work and will cause sewage to back up into the shower. The Landlord could not provide testimony about which breakers were affected with the upstairs tenant's air conditioner units. She confirmed that she has only told the Tenant once not to plug anything into the bathroom outlet and that she has told the

Tenant she is costing her money. She stated that the electrical issue was because everyone had a lot of things plugged in. She instructed all the tenants to leave the shed light on so the Tenant would have light to get into her rental unit. The Landlord confirmed that she has only cleaned up the septic once for the Tenant and the last time she attended the rental unit was June 23, 2010. She has made no attempt to confirm if the septic pump was working properly or not as she thought things were finalized after the last hearing when they agreed the Tenant would be moving out.

In closing the Tenant stated that she has made arrangements with the next door neighbour to use her washroom and for bathing. She stated again that the sewage pump never shuts off in her unit. She confirmed that the shed light is left on now so she can see when it is dark out.

Analysis

The Landlord confirmed she did not provide the Tenant with a copy of her evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, in accordance with section 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*, I refuse to consider the Landlords' evidence. I did however consider the Landlords' testimony.

No findings were made in either the September 14th or October 15, 2010 decisions pertaining to the Tenant's claim for monetary compensation, therefore I proceeded with today's hearing and have carefully considered all of the testimony and the Tenant's evidence which included photographs, copies of two undated letters issued by the Landlord, and a written statement by the Tenant.

Section 32(1) of the Act provides that a landlord must provide a 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 the tenant.

In this case I find there is overwhelming evidence to support that when the sewage drainage became an issue the Landlord made only one attempt to resolve the issue and when that failed she issued the Tenant a 2 Month Notice to End the Tenancy. The Landlord then avoided the sewage drainage issue all together causing the Tenant to reside in a rental unit for the remaining five months with feces intermittently backing up in her bathroom. I find the Landlord's neglect to be an egregious breach of section 32 of the Act, therefore I approve the Tenant's monetary claim of \$875.00.

I hereby order the Landlord to comply with section 32 of the Act to have the sewage drainage system repaired to ensure there are no feces backing up into the shower or toilet in the Tenant's rental unit, no later than Monday **November 19, 2010, at 5:00 p.m.** I further order the Landlord to ensure the electrical and kitchen water leak problems are attended to no later than **December 17, 2010.**

Conclusion

I HEREBY ORDER the Landlord to comply with my Orders listed above and the *Residential Tenancy Act*, pursuant to section 62 of the Act.

The Tenant's copy of this decision will be accompanied by a Monetary Order in the amount of **\$875.00**. This order must be served on the respondent Landlord and may be filed in Provincial Court and enforced as an Order of that court.

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 09, 2010.

Dispute Resolution Officer