

DECISION

Dispute Codes DRI, MNR, MNDC, ERP, RP

Introduction

This hearing was convened by way of conference call to deal with the tenant's application disputing an additional rent increase; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and for an order that the landlord make repairs for health or safety reasons.

Both parties attended the conference call hearing, and the tenant called a witness. All information and testimony provided has been reviewed and is considered in this Decision.

At the outset of the hearing, the tenant applied to amend his application to add 4 months of loss of space instead of the stated one month, as well as additional loss of wages. He asks that his total claim be increased from \$1,895.00 to \$4,040.00 and stated that \$2,640.00 is for a loss of wages over a 4 month period. Since the tenant has stated that the quantum is the only amendment requested and he has not applied for additional relief, the amendment is allowed.

Issue(s) to be Decided

Is the tenant's dispute with respect to an additional rent increase justified?

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

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

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Is the tenant entitled to an order that the landlord make emergency repairs for health or safety reasons?

Background and Evidence

This month-to-month tenancy began on August 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$675.00 is payable in advance on the last day of the previous month. In mid-July, 2010 the landlord collected a security deposit from the tenant in the amount of \$340.00. There are arrears of rent, however the parties do not agree on the amount of those arrears. The landlord testified that the tenant is in arrears \$65.00, and the tenant testified that the arrears total \$40.00.

The tenant testified that rent had originally been \$675.00 but the landlord raised it to \$700.00 without notice to the tenant and told the tenant that it was to cover hot water costs when the tenant's son moved in, which the tenant stated is paid by the tenant.

The tenant also testified that the landlord had promised that he would replace the sinks in the kitchen and the bathroom as well as a new furnace which hasn't worked since the tenant moved in. Further, the burners and broiler in the gas stove do not work which the landlord promised to repair or replace but did neither.

The tenant also testified that there are mice in the cupboards and rat feces under the sinks. When he told the landlord about it, he told him if he didn't like it, he should move out. The tenant testified that he's laid traps, but he's moving at the end of January, 2011.

The tenant also testified that for over 4 months he has been ill because of the cold air in the rental unit. He has missed work for about 3 weeks, and gets paid \$880.00 per week. He did not receive any pay during the time he was off work sick.

The tenant also testified that he put up curtains to block off the living room and has space heaters running in the kitchen and bedroom. The tenant is claiming loss of space as a result, as well as the cost of running the space heaters. He also provided a copy of a BC Hydro bill to prove the increase in heating costs. He stated that the landlord sent a repair person to fix the furnace but he told the landlord and the tenant on January 4, 2011 that they could not get the parts to affect the repairs; a new furnace is required.

The tenant's witness testified that she was a tenant in the rental unit previously. She stated that the furnace didn't work when she lived there. The thermostat was replaced, but that didn't help. The landlord told her he would replace it, but didn't during her tenancy. She further testified that the landlord told her rent was going to be increased because of repairs required.

The tenant also provided letters in advance of the hearing from individuals who visited the rental unit during the tenancy. One of those letters is dated January 14, 2011 from a Youth and Family Development Worker who witnessed rodent feces in cupboards, leaks from both the kitchen and bathroom sinks, a furnace that does not always start and a defective stove.

The tenant claims:

- \$450.00 for the rental increase for repairs not done;
- \$25.00 for the rental increase for water;
- \$120.00 for the increase in the hydro due to the usage of space heaters;
- \$100.00 for laundry due to a bed-bug infestation;
- \$500.00 for moving expenses;
- \$350.00 for loss of use of the living room;
- \$2,640.00 for lost wages;
- \$250.00 for the cost of lost food to rodents;
- \$100.00 for the cost of space heaters.

The landlord testified that he did not promise the tenant anything. He stated that he fixed the sinks by replacing the taps in the kitchen, and he fixed the taps in the bathroom last June. Then the tenant told him that the sink was dripping, and he tried to replace it but the tenant was never available when the plumber showed up. He put the new one downstairs in a storage space.

He further testified that in September, 2010 he had the furnace repaired, and he was told at that time that a new vent was required, which he bought from Home Depot to prevent flames from coming out. He was told by a neighbour that the heat wasn't working and the landlord checked that out on January 4, 2011. He further testified that the tenant didn't tell him anything about the stove.

The landlord also testified that the tenant was required to pay an additional \$25.00 per month if there were any other occupants in the rental unit, and the tenant had his one or two children residing there. A copy of the tenancy agreement was provided in advance of the hearing, which states that there is an addendum, however that addendum was not provided.

The landlord also testified that the tenant had told him on more than one occasion that the tenant had been laid off from his employment. The landlord disputes that the tenant was off work due to illnesses caused by the rodents or lack of heat in the rental unit.

Analysis

The *Residential Tenancy Act* states:

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.

And further,

32 (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 have viewed the photographs provided by the tenant and it is clear that the rental unit has some infestation of mice. I have also reviewed the documentation provided by the parties prior to the hearing, and note that the landlord replaced the furnace on or about January 16, 2011 after the tenant had applied for dispute resolution, which was more than 5 months after the tenant moved in. I also have the evidence that the landlord paid for furnace repair in September, 2010, as well as the evidence of the previous tenant that the landlord promised to replace the furnace at that time. The previous tenant testified that the landlord told her the furnace would be replaced after he replaced the thermostat which did not correct the situation. Therefore, the tenant's application for the landlord's failure to comply with Section 32 of the *Residential Tenancy Act* has been set out. In addition, I find that the landlord has failed to maintain the residence in a state of repair that prevents rodents from infesting the rental unit. I further find that if the landlord fixed the taps in the sinks, the repairs were not sufficient enough to prevent leaks. Further, the evidence of the landlord that he could not get into the unit to repair one of the sinks is not acceptable; the landlord is entitled to make repairs to the unit upon giving the tenant 24 hours written notice, or with the consent of the tenant. Therefore, I find that the tenant has established that the landlord is in breach of Section 32 of the *Act*.

The tenant has claimed moving expenses due to unhealthy, unsafe living conditions in the amount of \$500.00. I find that this can only be established if the tenant is able to establish that he had to move from the rental unit due to the landlord's failure to comply

with the *Act* or the tenancy agreement. Having found that the landlord has failed to effect repairs, and the landlord was required to ensure a working furnace and did not, combined with the rodent infestation, I find that the tenant has made out his case for damages in the amount equivalent to one month's rent, or \$675.00 for the landlord's breach of Section 32 of the *Act*, in lieu of the claim for moving expenses.

I have also reviewed the BC Hydro bill received by the tenant, and I agree that the hydro has increased, and I find that, in the circumstances, the tenant has proven that the increase is a result of the space heaters. The bill provided is dated December 30, 2010 and shows that after certain credits were applied to the account, the tenant paid \$35.27 for usage from September 26 to October 27; \$75.26 from October 27 to November 26; and \$123.25 from November 27 to December 28, 2010. The bill also shows that the tenant is on an equal payment plan in the amount of \$69.80 per month. Therefore, I find that the tenant has proven a claim for an additional \$38.91 over and above the equal payment plan, or if compared to the previous bill, the tenant has paid \$127.97 more. The tenant is claiming \$120.00, and I find that the tenant has established that claim.

I further find that the tenant is entitled to rent abatement for the loss of use of the entire rental unit due to loss of heat. I accept the evidence of the tenant, and the photographs provided, and find that one quarter of the rent paid for the months of November and December, 2010 is justified. The tenant is entitled to recover one quarter of the rent paid for those months, for a total of \$337.50.

I further find that the landlord has increased the rent contrary to the *Residential Tenancy Act*. In order to increase rent, the landlord must provide the tenant with 3 month's notice, the notice must be in the approved form, and must be for the amount set out in the regulations. I have also reviewed the tenancy agreement which states that the payment of rent is subject to rent increase given in accordance with the RTA. I find that the rent increase has not been given in accordance with the *Act*. However, the tenant's application claims 6 months of an overpayment of rent, for a total of \$450.00 and a rent increase for water of \$25.00. The tenant's position is that the landlord increased the rent from \$600.00 for a previous tenant to \$675.00 for a new tenant because of repairs that the landlord never completed. I cannot find that the \$75.00 increase is unlawful. A landlord is not bound by a previous rental agreement in a new tenancy. Therefore, I also find that the tenant's evidence is correct, that he paid \$635.00 for rent for the month of December, and that the landlord's submission that the tenant paid \$610.00 takes into account the \$25.00 unlawful rent increase for which the landlord is not entitled. Nothing in the tenancy agreement states that the tenant pays an additional sum of rent for having his children, or any other occupant reside in the rental unit.

With respect to the tenant's claim for \$100.00 for laundry due to a bed-bug infestation, I find that the tenant has failed to establish that cost.

With respect to the tenant's claim for wage recovery due to illness as a result of the landlord's failure to complete repairs, the furnace in particular, I find that the tenant has failed to prove the amount of the loss. The evidence of the landlord is that the tenant told him he was laid off from work; the tenant stated that he was off work for about 3 weeks and earns \$880.00 per week. The tenant has not provided me with a work record or proof of employment or the dates that he was ill in comparison to the dates he was laid off. Therefore, the tenant's application for loss of wages cannot succeed.

With respect to the space heaters purchased by the tenant, I have no evidence of the cost associated with that expense. The tenant has claimed \$100.00 but has failed to establish the actual cost. I find that the space heaters belong to the tenant, and he is entitled to take them with him when he moves from the rental unit. Therefore, no award can be granted to the tenant from the landlord for that cost.

I further have no evidence of the cost of food consumed or spoiled by rodents. I further have no evidence before me how much food has been lost. Therefore, the tenant's application for \$250.00 cannot succeed.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Therefore, I find that the tenant is entitled to a monetary order in the amount of \$120.00 for hydro; \$337.50 for loss of space; \$25.00 for an unlawful rent increase; \$675.00 in lieu of moving expenses; and \$50.00 for recovery of the filing fee; for a total of \$1,207.50.

With respect to the tenant's application for an order that the landlord make repairs to the unit, site or property, and the application for an order that the landlord make emergency repairs for health or safety reasons, I dismiss these portions of the application; the tenant has given his notice to vacate the rental unit, and therefore the landlord will be required to effect repairs prior to a new tenancy, pursuant to Section 32 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,207.50. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: February 07, 2011.

Residential Tenancy Branch