



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order permitting him to reduce his rent. Both parties participated in the conference call hearing.

At the hearing the landlord advised that his name had been misspelled in the application. I amended the application to reflect the accurate spelling and the style of cause reflects this amendment.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the tenant entitled to a reduction of rent?

Background and Evidence

The tenant testified that when he moved into the rental unit, there were considerable repairs which had to be performed and he at that time entered into an agreement with the landlord under which he would receive one month's free rent for his labour and the landlord would reimburse him for materials. The tenant asked the landlord for \$1,165.00 for materials and received \$500.00 from the landlord. The tenant now seeks to recover the \$665.00 he feels he is still owed.

The landlord testified that there was no agreement for the tenant to perform labour or to compensate him for the cost of materials. The landlord maintained that the tenant did work in the rental unit of his own volition absent an agreement and that the landlord did not give the tenant a free month's rent in exchange for his labour. The landlord acknowledged having paid the tenant \$500.00 but stated that he did so because he recognized that a screen, doors, yard light and breaker were required and that the landlord should bear the cost of those items.

The tenant testified that the unit has flooded on three occasions, the first time on December 12, 2010. On that date the tenant purchased a new pump at a cost of \$129.00. The tenant claimed that the basement flooded a second time on December 14 causing the furnace to stop working. The tenant stated that he telephoned the landlord but the landlord did not answer the telephone and further stated that the landlord had not provided an emergency contact number. The tenant arranged for a repairperson to repair the furnace at a cost of \$525.60 and the tenant purchased a sump pump at a cost of \$300.00. The basement flooded a third time on December 19. The tenant testified that in the month of January he paid just \$600.00 of his \$1,200.00 rent to recover part of the cost of the furnace repair and now seeks to recover the balance of \$225.00 for that repair as well as the cost of both pumps.

The landlord testified that the furnace was installed new in late October 2010 and denied any knowledge of the furnace not functioning properly. The landlord further testified that he attended at the rental unit when the first flood occurred and he found that the pumps were not plugged into the wall sockets. The landlord claimed to have pumped out the water at that time and found that both pumps were functional. The landlord denied having received any calls from the tenant at the time the furnace allegedly stopped working and stated that the tenant has failed to provide any receipts for the furnace repair or the pumps.

The tenant testified that each time the basement flooded, he had to spend considerable time pumping out water and drying the area. The tenant specifically complained that the flood created debris from drywall which had not been removed. The tenant seeks \$1,200.00 in compensation for his time and labour spent cleaning after the flooding.

The landlord maintained that prior to the beginning of the tenancy, the landlord had removed drywall and cleaned the basement area.

The tenant seeks a reduction in rent until such time as he is able to rest assured that the pumps will work properly and will experience no further flooding.

Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. In order for the tenant to recover the cost of materials he purchased at the outset of the tenancy, he must prove that he had an agreement with the landlord that he would be reimbursed for those materials. I am not satisfied that this is the case. The tenant has no evidence to support his testimony that such an agreement exists and I find that the fact that the landlord reimbursed him for specific purchases is insufficient to prove that a

more extensive agreement was in place. The claim for reimbursement of materials is dismissed.

Section 33 of the Act outlines a specific procedure which is to be followed in the event emergency repairs are required. The tenant must make at least 2 attempts to telephone the landlord and may only perform those repairs if the landlord has not responded within a reasonable period of time. The tenant is also obligated to give the landlord a written account of the repairs accompanied by receipts. The tenant acknowledged that he telephoned the landlord on December 18 but it appears he made just one attempt to telephone. The tenant did not provide the receipts for the furnace or pumps to the landlord or to this office. I find that the tenant has failed to prove that he followed the procedure outlined in section 33 of the Act, he has failed to prove that the pumps required replacement or that the furnace required repair and he has failed to prove the cost of those repairs as he provided no receipts either to the landlord or to this office. The claim for the cost of the furnace repair and replacement of the pumps is dismissed.

The landlord acknowledged that there were at least two floods in the rental unit and did not claim that the tenant was at fault for those floods. If the tenant had been at fault, he would have been responsible for the cost of cleaning up after the event. But if the flooding happens either through no fault of the landlord or due to the landlord's negligence, the landlord bears the burden of cleaning up. I find that the tenant is entitled to be compensated for the time spent cleaning after the flooding occurred as well as for the time spent drying the basement. The tenant provided no evidence showing how many hours he spent cleaning after each of the floods and therefore I am unable to make an award by means of a formula multiplying hours of work by a specified rate. I find that an award of \$500.00 will adequately compensate the tenant and I award him this sum.

The tenant's claim for a reduction in rent is dismissed. The tenant has failed to prove that there is a further danger of flooding or that further repairs are required.

I find that the tenant should recover the filing fee paid to bring his application and I award him \$50.00.

Conclusion

The tenant has been awarded a total of \$550.00 and may deduct this sum from future rent owed to the landlord. In the event the tenancy does not continue, I grant the tenant a monetary order under section 67 for \$550.00. This order may be filed in the Small Claims Division of the 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: February 11, 2011

Residential Tenancy Branch