



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC OLC ERP RP RR FF

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, to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement, to have the Landlord make emergency repairs for health or safety reasons, to have the Landlord make repairs to the unit, site or property, to allow the tenant to reduce rent for repairs, services or facilities agreement upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, served personally to the resident building manager on February 21, 2011. The Tenant witnessed the resident building manager faxing the documents to the Landlord's head office on February 21, 2011. Based on the Tenant's testimony I find the Landlord has been sufficiently served notice of today's hearing, in accordance with the Act.

The Tenant appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared at the teleconference hearing on behalf of the Landlord, despite them being served notice of today's hearing in accordance with the Act.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain monetary compensation, Orders to have the Landlord comply with the Act and make repairs, and to entitle the Tenant to reduced rent as a result of that breach?

Background and Evidence

The Tenant testified that he entered into a written tenancy agreement for a fixed term tenancy effective October 1, 2010 which is set to switch to a month to month tenancy agreement after September 30, 2011. Rent is payable on the first of each month in the amount of \$795.00. On or before October 1, 2010 the Tenant paid \$397.50 as the security deposit.

The Tenant advised that his rental unit is a 1 bedroom apartment located on the first floor of the building. From the onset of their tenancy he has written continuous requests to have repairs done to his unit for the following three primary issues:

- 1) The shower facet has not worked properly from the beginning. Either the water is too cold or it is too hot it is never a blend of the hot and cold water.
- 2) They have had to deal with an infestation of insects which quickly changed to an infestation of mice once the cold weather arrived. They currently have 18 mouse traps throughout their rental unit and have already caught 3 mice. The resident building manager has even acknowledged how smart the mice are getting as they have figured out how to get the food without setting the traps. The Tenant states there are numerous entry holes which the mice come into his unit that he has requested to be filled. He is concerned that when the weather changes they will have another insect infestation.
- 3) The heaters in the living room and bedroom do not work. He has had to endure the cold winter months without heat. He has requested on numerous times to have the heating repaired to which the Landlord only replies that it is too expensive to fix such an old system. He stated it is like a boiler system and the Landlord simply refuses to fix it. He went out and purchased portable electric heaters to make it through the winter months and now his heating bill has increased from approximately \$24.00 per month to as high as \$96.00 per month.

The Tenant confirmed that the first time he put his requests for repair in writing was October 2, 2010. His Landlord has forms that they are to complete for repair requests and a box to place them in. He has completed so many requests that he has lost count. He has done his best to keep his unit warm throughout the winter and he even put up plastic on the windows. The Landlord continues to refuse to repair the heat saying it is too expensive. He has been told that they will fixed the windows and holes next month and then it is always put off and now he has been told it will be next year.

He advised the maintenance staff from the Landlord's head office came to check his unit during the first week of October 2010. This man told him that he can see his unit needs repair but it costs too much to get the work done so it will not be completed.

After a brief discussion the Tenant advised that he is not really seeking \$5,000.00 for compensation and only applied for that because he thought that this request would get the Landlord's attention so they would fix his unit. He has been in Canada for only a few short years and he works really hard to pay his own way to have a roof over his head. He only wishes to live like a human and to have the necessities of heat, a proper shower and no mice or insects. He wishes to withdraw his request for \$5,000.00 and wishes to proceed with the remainder of his application.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant.

Section 32 of the Act provides 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, makes it suitable for occupation by a tenant.

Based on the verbal testimony, I find that on a balance of probabilities it is more likely than not that, after the previous hearing was dismissed, as no one attended, the Landlord ignored the continued communication, request for repairs, and complaints from the Tenant.

Based on the foregoing I find that the Landlord has breached Section 32 (1) of the *Residential Tenancy Act* by neglecting to initiate actions to remediate the mice infestation, by neglecting to repair the heating system, and neglecting to repair the shower water issue, thus putting the Tenants' health and safety at risk.

Therefore, I HEREBY ORDER THE LANDLORD TO

- (a) Hire a professional pest control company to secure the rental unit and cease the mice infestation; and treat the unit and building to ensure no insect or mice infestation re-occurs inside the Tenant's unit ; no later than **March 25, 2011**; and

- (b) Repair the water flow to the Tenant's shower to ensure there is a melding of hot and cold water temperatures to provide moderate water temperature to shower in; no later than **April 8, 2011**; and
- (c) Have the heating system repaired so the Tenant has heat in the living room and bedroom to a temperature that meets health and safety requirements set out by the municipality; no later than **April 30, 2011**.

Having found the Landlord to be in breach of Section 32 of the Act, I hereby order the Tenant to reduce his rent from \$795.00 per month to **\$400.00 per month effective April 1, 2011** and continuing for every month following until the first of the following month after the Landlord has made application to the *Residential Tenancy Branch* for dispute resolution, to substantiate the above Orders have been completed, **and** the Landlord has been issued an Order to return the rent back to \$795.00 per month.

The Tenant has been successful with his application; therefore I award recovery of the \$50.00 filing fee.

Conclusion

I HEREBY ORDER the Landlord to repair the rental unit, as noted above, in accordance with Section 32, of the Act.

I HEREBY ORDER the Tenant to reduce his rent from \$795.00 per month to **\$400.00 per month effective April 1, 2011**, in accordance with section 65 of the Act.

The Tenant may further reduce his April 1, 2011 rent by the onetime award of the \$50.00 filing fee making his rent payable for April 1, 2011 to be **\$350.00**.

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: March 14, 2011.

Residential Tenancy Branch