



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, OLC, ERP, RP

For the landlord - OPR, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant filed her application to cancel a 10 Day Notice to End Tenancy for unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, An Order for the landlord to make emergency repairs, an Order for the landlord to make repairs and an Order for the landlord to comply with the *Act*. At the outset of the hearing the tenant testifies that she has moved from the rental unit and withdraws all portions of her application except the Monetary Order for money owed or compensation for damage or loss.

The landlord seeks to obtain a Monetary Order for unpaid rent, An Order to keep the tenants security deposit and to recover her filing fee. At the outset of the hearing the landlord withdrew her application for an Order of Possession as the tenant has moved from the rental unit.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on June 01, 2011. Rent for this unit was agreed at \$1,600.00 per month due on the first day of each month. The tenant paid a security deposit of \$500.00 and this was offset against work completed by the tenant at the start of the tenancy. The tenancy ended on September 30, 2011.

The tenant testifies that she entered into a contract with the landlord to carry out work on the unit as the unit had been destroyed by the previous tenants. This contract was originally for \$2,700.00 but was later reduced to \$2,200.00 because the landlord did not want any repairs completed to the downstairs bathroom. The agreement was that the sum of \$2,200.00 was to be offset against the rent for June and the security deposit along with a washer and dryer.

The tenant testifies they completed the renovations as requested. Later the septic tank backed up and flooded the carpets and hardwood flooring in the basement area with contaminated water along with her children's bedding which the landlord did replace. The tenant states she had to clean this up herself and they later found the septic tank was not plugged in to pump the water away and the landlord had not notified them of this plug.

The tenant states she also experienced mould issues in the basement, they could not use the bathroom as the landlord would not renovate it, there were problems with the power and she was told by an electrician on July 25, 2011 that the power was not grounded to the house, There were no vent covers, some of the basement windows had a single pane of

glass some of which was broken. These windows did not lock and the tenant had security issues for the house because of this. The tenant also testifies the front steps to the house had a railing which was not attached securely and was potentially a hazard. The landlord was supposed to repair this but failed to do so. The tenant testifies the landlord did send a man to the house to look at the power issues but as he carried no identification the tenant would not let him in. The tenant agrees she did not put these concerns in writing to the landlord but did inform her verbally and was supposed to meet the landlord at the house but the landlord failed to appear as agreed. The tenant testifies that this is a five bedroom house and they lost the use of the downstairs portion of the house with the exception of the laundry room. This included two bedrooms, a living room, a kitchen and bathroom. The tenant testifies she wanted to use the downstairs kitchen in the summer months as it was cooler in the basement. The tenant seeks compensation for loss of use of half her rental house to the sum of \$4,000.00. The tenant has provided numerous photographs and a piece of drywall with mould on it.

The landlord disputes the tenants' claims. The landlord testifies the tenant did not notify her about any work required to the basement except that the plugs did not work and there were no vents. The landlord testifies that there was no mould in the property before the tenant moved in. She states she told the tenants not to move into the house until all the work had been completed but they decided to move in earlier. The landlord testifies the tenant did ask for vent covers and she asked her to tell her how many and what sizes she needed. The landlord states the tenant never got back to her with this information. The landlord testifies when the tenant informed her that she had no power downstairs she sent an electrician to the house but the tenant would not let him in because he was not certified. The landlord states she sent another certified electrician to the house and he was also refused entry because the landlord had not given the tenant 24 hours written notice and because he did not carry a business card showing he was certified.

The landlord testifies that there is no septic tank in the house. It is on the sewage system and a pump takes the waste out of the house. The landlord testifies the pump was and is working and the tenants must have switched it off and pulled out the plug. The landlord

states she does not think the tenants would have done this on purpose but the plug was removed and they were the only ones working on the house. The landlord disputes that the windows make the unit unsecure or that the tenant informed her of her concerns about the windows and disputes the tenant informed her of the damaged railing.

The landlord testifies the tenant only paid \$400.00 in rent for September, 2011 and she issued the tenant with a 10 Day Notice to End Tenancy on September 11, 2011 due to \$1,200.00. This Notice had an effective date of September 21, 2011. The landlord testifies the tenant did not return the keys to the unit on the day she moved out so the landlord also seeks to recover unpaid rent up to October 15, 2011 of \$800.00.

The tenant agrees she owes rent for September, 2011 of \$1,200.00 and states she could not afford to pay this as the landlord was forcing her to move out. The tenant states she does not owe rent for October, 2011 as she moved out on September 30, 2011. The tenant agrees she did not return the keys to the landlord and returned to the property on October 03, 2011 to take photographs for her evidence.

The landlord seeks an Oder to keep the tenants security deposit in partial satisfaction of the rent arrears. The landlord also seeks to recover her \$50.00 filing fee from the tenant.

Analysis

With Regard to the tenants claim for compensation for the loss of use of the basement portion of the house and the landlords failure to make repairs to the house; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to justify the amount of compensation sought for the loss. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant has provided numerous pictures showing the condition of the rental unit before they started to do the renovations agreed with the landlord. These pictures also show what appears to be mould on the drywall and wood. The tenant has also sent in a section of drywall which also appears to have black dust which is also likely to be mould. The tenant has sent in pictures showing a leak in the ceiling, old and unfinished electrical outlets and light sockets, crumbling concrete on the front steps, single pane glass sliding windows which are not secure in the basement, no vent covers and an unfinished bathroom in the basement.

I would conclude from these photographs that it is highly likely the tenant did have mould in the basement of the unit, which from the photographs, appears to have been in place for some time and certainly longer than the period since the sewage flood. I am unable to determine who was responsible for removing the plug for the pump as both Parties evidence contradicts the other and no other corroborating evidence has been presented. I also find the outlets were old and had no covers, rendering them unsuitable. I find the front steps and railing require attention to make them safe. The basement windows are not secure and a landlord has a responsibility to provide and maintain adequate locks or locking devices on all exterior doors and windows of a residential premises. There are no vent covers and the bathroom in this area is likely to be unusable. However, I find the tenant agrees she did not inform the landlord in writing of her concerns and only discussed this verbally with the landlord. I further conclude that the landlord failed to appear for an inspection of the bathroom as arranged where she would have had opportunity to see areas

of the basement which required attention. The tenant does agree she denied access to the unit for the landlords' electrician. The landlord argues that the tenant did not inform her of most of the required repairs.

I have considered both parties arguments in this matter I find the tenant has not fully mitigated her loss in this matter by putting her concerns in writing to the landlord or by allowing access to the landlords electrician to view the work required in the basement. However I also find pursuant to s. 32 of the *Act* that the landlord has not provided and maintained 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.

Consequently, it is my decision that although the tenant has applied for compensation of \$4,000.00, as the tenant did not fully mitigate her loss in this matter I find I must limit her claim for the loss of the use of the basement and for living in an unsecure house due to no locks on the basement windows to \$600.00 per month for the four months of her tenancy to a total sum of **\$2,400.00**.

With regard to the landlords claim for unpaid rent; Section 26 of the *Act* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.* I find the tenant agrees she withheld **\$1,200.00** from Septembers rent as she could not afford to pay this and move. It is therefore my decision that the landlord has established her claim to recover this amount from the tenant.

The landlord has also applied to recover unpaid rent of \$800.00 up to October 15, 2011. The landlord issued the tenant with a 10 Day Notice to End Tenancy on September 11, 2011. The Residential Tenancy Policy Guidelines #3 state, in part, that In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during

the month would not end the tenancy until the end of the subsequent month. The landlord claims the tenant did not return the keys to her so she could not start to advertise the unit for rental for October 01, 2011 and the tenant agrees she did return to the property on October 03, 2011 to take photographs of the unit. Consequently, it is my decision that the landlord is entitled to recover unpaid rent up to October 15, 2011 of **\$800.00**.

As the landlord has established her claim for unpaid rent I find she is entitled to keep the security deposit of **\$500.00** to offset against the unpaid rent pursuant to s.38(4)(b) of the *Act*. I further find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

As both parties are entitled to a Monetary Order I have offset the landlords' monetary award against that owed to the tenant. The tenant will receive a Monetary Order for the following amount:

Unpaid rent for September and October, 2011 awarded to the landlord	\$2,000.00
Less security deposit	(-\$500.00)
Plus filing fee	\$50.00
Subtotal for the landlord	\$1,550.00
Compensation awarded to the tenant	\$2,400.00
Total amount owed to the tenant	\$850.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: October 17, 2011.

Residential Tenancy Branch