



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, PSF, OLC, MNR, MNDC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting a monetary order for the cost of emergency repairs, compensation for damage or loss under the Act, regulation or tenancy agreement, and orders to comply with the Act, regulation, or tenancy agreement, to make emergency repairs for health or safety reasons, and to provide services or facilities required by law.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s)

The Tenant confirmed that his claim regards compensation in relation to periods of time in the rental unit where the boiler was not working and was under repair, resulting in heating issues in the rental unit, and for a racoon infestation that occurred in the rental unit.

The parties agreed that the boiler had been repaired and the heat was properly flowing to the rental unit by November 04, 2011. The parties also agreed that the racoon issue was resolved as of May 2011 and racoons were no longer affecting the rental unit. As a result of this information from the parties, I find it appropriate to dismiss the portion of the Tenant’s claim where he has requested orders to the Landlord to comply with the Act, regulation, or tenancy agreement, to make emergency repairs for health or safety reasons, and to provide services or facilities required by law.

The Tenant also confirmed that he did not pay any of the cost of emergency repairs in relation to the rental unit. As a result this portion of the Tenant’s claim is also dismissed.

The balance of the Tenant’s claim is for monetary compensation for damage or loss under the Act, regulation, or tenancy agreement.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The parties agree that they have a written tenancy agreement and that the tenancy commenced on March 01, 2009. The parties agree that the Tenant's monthly rent is \$1,319.00 due on the first of each month. The parties agree that the rent includes heat and hot water provided by the Landlord. The parties agree that the Tenant has his own hydro account for his electricity usage. The parties agree that they received copies of the evidence submissions from one another in advance of this hearing.

The Tenant stated his monetary request for compensation for damage and loss as follows:

- reimbursement for half of one month's rent ($\$1,319.00 \div 2 = \659.50) for the boiler not providing heat to the rental unit from March 23, 2011 to April 12, 2011;
- reimbursement for half of one month's rent ($\$1,319.00 \div 2 = \659.50) for the boiler not providing heat to the rental unit from September 15, 2011 to November 04, 2011;
- \$60.00 for an extra space heater and \$40.00 for an extra long extension cord purchased by the Tenant in March 2011;
- reimbursement of extra hydro (electrical) costs due to use of space heaters in rental unit during periods where boiler was not providing heat to the rental unit, which he estimated at \$50.00;
- ten hours of the Tenant's time at a rate of \$100.00 per hour = \$1000.00, to make phone calls, email and meet with pest control, Landlord's agents, and repair persons about the racoon infestation affecting the rental unit during the period April 13, 2011 to May 02, 2011; and
- \$500.00 for distress to himself and his visiting relatives during the period April 29, 2011 to May 02, 2011.

The boiler issues, heater, extension cord, and hydro costs

The Tenant states that the boiler stopped working in the building and his rental unit had no heat from the boiler from March 23, 2011 to April 12, 2011. The Tenant confirmed that the Landlord responded to the issue and had the boiler fixed, however, it took time to get all of the work completed on the boiler. The Tenant stated that the Landlord provided him a portable heater, however, he is in a one bedroom rental unit and found

he needed a second heater. The Tenant stated that he purchased a heater at his own expense for the rental unit in March 2011, as he was too cold with just one heater. The Tenant stated that he also purchased an extra long extension cord at his own expense as he would have tripped the breaker in the rental unit if he put both heaters in the same electrical outlet. The Tenant stated that he did not request a second heater or extension cord from the Landlord, and that he did not request reimbursement for his purchases from the Landlord at the time. The Tenant did not provide a receipt with regards to the purchase of the heater or the electrical cord. The Tenant stated that the Landlord is willing to reimburse him for his increased electrical usage due to using the heaters during the period March 23 to April 12, 2011, and he has provided the Landlord a copy of his hydro bills. The Tenant states that he wants the Landlord to issue a cheque for the increased hydro usage rather than have this be a rent deduction. The Tenant stated that he declined the Landlord's offer to deduct the hydro from his rent. The Tenant confirmed that he remained in the rental unit during the period of time the boiler was not working. The Tenant stated that he is seeking reimbursement of his rent for half a month to compensate for this first boiler outage, as well as reimbursement for the cost of his heater and extension cord purchases, and his increased hydro costs.

The Tenant stated that the first boiler issue seemed resolved, and during the summer the boiler was not in use as the weather was warm. The Tenant stated that he noticed that the temperatures were getting cool as of September 15, 2011 and he requested that the building manager turn the boiler on. The Tenant stated that the building manager informed him that the practice was to turn the boiler on as of October first each year, as the temperatures were not cold enough until that date. The Tenant stated that he then waited to October first, and found that the heat did not come on. The Tenant stated that the boiler had failed again and the Landlord had to repair it and the Tenant had to use portable heaters again for the period October 01, 2011 to November 02, 2011. The Tenant stated that during that period he complained to the Landlord that he was not satisfied with the heater they had provided and on October 18, 2011 the Landlord purchased a blower heater for the Tenant. The Tenant confirmed he remained in the rental unit during the period of time the boiler was not working. The Tenant stated that he will ensure that he provides all of his hydro bills for the period to the Landlord. The Tenant clarified that he is seeking reimbursement of his rent for half a month to compensate for the second boiler outage, and a cheque for reimbursement of his increased hydro costs.

The Landlord stated that they acted in good faith and the boiler failure was unexpected at that time, as even though it was an old boiler they thought it would last longer. The Landlord stated that they mitigated the situation by having the boiler dealt with as soon as possible, repairing and replacing whatever was necessary and using a technician to

do the work. This work occurred for the period March 23-April 12, 2011. The Landlord stated that they view it as their obligation to provide heat and that they met this obligation by providing space heaters to all of the tenants. The Landlord stated that had the Tenant requested a heater or an extension cord at the time of the loss of heat, they would have purchased one for him on their account. However they do not agree with him making a claim for these items after the fact and they note that he has provided no receipts in evidence with regards to these items.

The Landlord stated that they received a complaint from the Tenant about a lack of heat at the end of September 2011, so they went to turn on the boiler and they became aware of a new problem with the boiler. The Landlord stated they had to immediately undertake repairs to the boiler and this occurred during the period September 28 to November 04, 2011. The Landlord stated that they were not aware that the Tenant was unhappy with the first heater provided to him until October 2011, at which point they purchased a blower heater for the Tenant.

The Landlord also stated that they agreed to reimburse all of the renters in the building for their increased hydro (electrical) costs for both periods of boiler outage as a result of the space heaters being used. The Landlord stated that the Tenant rejected their offer to deduct it off his rent, as they have done with the other tenants, and requested that they issue him a cheque instead, which they agree to do immediately. The Landlord states that they have also issued all of the tenants in the building a \$50.00 gift certificate to their local grocery store as a gift for the inconveniences caused. The Landlord's position is that the Tenant is not entitled to reimbursement of his rent, or costs related to the purchase of a space heater and extension cord. The Landlord states they will satisfy the Tenant's hydro expenditures by issuing him cheques and if there are any outstanding bills the Tenant has for the periods in question they agree to resolve those with the Tenant directly.

The Tenant agreed that he will deal directly with the Landlord to resolve the hydro issue after the hearing and receive the cheques.

The racoon infestation

The Tenant stated that he noticed a pest issue developing at his rental unit. At first he states he did not know what sort of creature it was, but that it turned out to be a racoon. The Tenant stated that he first notice a pest issue affecting his rental unit on April 13, 2011 as he could hear a noise in his bathroom around the vent grate. The Tenant stated that he also noticed that some of the vent grates on the exterior of the building were missing or decaying and he believed that is where the pests may have gotten into

the building. The Tenant stated that he notified the Landlord's building manager BW and requested that they investigate the issues and resolve the pest problem. The Tenant states that he went away on a business trip from April 15-25, 2011, but that he followed up with the Landlord while he was away to see what progress they were making. The Tenant stated that he emailed the Landlord on April 23, 2011 to find out what they were doing to ensure that the building manager BW was getting this issue dealt with. The Tenant stated that he believes the building manager BW was having difficulty getting any financial authorization from the Landlord until his email of April 23, 2011. The Tenant stated that he returned from his business trip on April 25, 2011.

The Tenant stated that he heard a creature clawing at the grate all night on April 29, 2011 and the next morning saw blood on the grate. The Tenant stated he realized that the pest problem had not been fully resolved while he was away. The Tenant stated that on the evening of April 30, 2011 creatures breached through his kitchen ceiling by the cupboards and entered his kitchen. The Tenant stated that his mother and young nephew were staying with him and they were all very alarmed by creatures entering the rental unit and felt it was a health hazard and dangerous to stay in the rental unit. The Tenant stated that he could not locate an available hotel so they had to stay in the rental unit. The Tenant stated that he contacted the building manager BW that evening to report the creatures and BW organized a pest control specialist to come to the building.

The pest control company came the next day, but had to return again to get the issue under control. The Tenant states that the pest control company initially stated that the creatures were most likely squirrels, but a few days later discovered that they were racoons. The Tenant states that racoons had also breached the laundry room in the building. The Tenant stated that he was not satisfied with the Landlord's handling of his complaints about the pests so he felt it necessary to maintain contact with the pest control company while the problem was getting resolved because he was not certain that the building manager would deal with the issue properly. The Tenant estimates that ten hours of his time were spent dealing with the racoon issue through phone calls, emails, and in person contact with the pest control company and the Landlord's agents. The Tenant also states that he called the SPCA and Wildlife Rescue as he wanted to ensure the pest control company was dealing with the racoons humanely. The Tenant states that it took until May 16, 2011 before he was satisfied that the racoons were gone from the building. In the Tenant's evidence he submitted copies of emails with a new agent for the Landlord. These emails reference that the Tenant withheld two month's rent and had made previous requests to the Landlord for compensation for the issues he had been dealing with in the rental unit. The Tenant states that he paid the rent owed and filed for dispute resolution of his issues, as he did not want to be evicted.

The Tenant states that he has a company office nearby the rental unit location and that he is a salaried director of his own company, as well he is a manager of his company for which he separately bills \$100.00 per hour for management fees. The Tenant states that the Landlord should pay him \$1000.00 which represents ten hours of his time at his management rate. The Tenant did not provide any evidence of his rates of pay or any documentation or timesheet relating to the time spent on phone calls, emails, etc... The Tenant additionally states that the Landlord should also pay him \$500.00 due to the distress and inconvenience caused to him and his visiting family members during the racoon incident, however, he acknowledges this is an estimation as he incurred no bills or expenditures in relation to the racoon incident.

The Landlord states that the building manager and their agent for the building have changed so those parties were not in attendance at the hearing. The Landlord states that that building managers are required to rely on the experts, in this case a pest control company. The Landlord states that they have a regular monthly contract with a pest control company to regularly check on the building, and this is part of their monthly maintenance. In the Tenant's evidence there are copies of emails with a new agent for the Landlord. The email of October 07, 2011 states that the Landlord responded to Tenant's complaint of April 13, 2011 by having a pest control company attend the building on April 14, 2011 and lay traps as the pests could not be located at that time. The email also states that the pest control company returned on several occasions to check the traps which were empty, and that it took approximately one month for the racoons to be contained and removed.

The Landlord states that the Tenant complained that creatures had entered his suite on April 30, 2011 and that they responded promptly and the pest control company came the next day to resolve the issue. The Landlord stated that on May 01, 2011, the pest control company ensured creatures could not enter the suite by putting plywood over the small hole in the Tenant's kitchen where the creatures had entered. The Landlord stated that the building caretaker concluded his exterior repairs to the vent grates. The Landlord stated that the pest control company came back on May 03, 2011 and determined the creatures were racoons, at which time the technician installed appropriate traps and repaired any entry points. In the Landlord's evidence they provided a written confirmation from the pest control company and their invoice to show that the technician's work completed on May 03, 2011. The Landlord's position is that they responded to the racoon issue and fully resolved it in a reasonable period of time and that the Tenant is not entitled to any compensation for this.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(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.

While the racoons issue and boiler issues did occur, I do not find that these were not foreseeable or due to Landlord negligence. While the Tenant and Landlord disagree as to how promptly the pest issue was responded to, I note the Tenant was away from the rental unit, on a business trip, from April 15 to 25, 2011. I find that the Landlord responded to each of the Tenant's issues thoroughly so that they were fully resolved, and each issue took time to resolve. I find that the time it took to resolve each issue fully was reasonable. I do not find that the Landlord contravened section 32 to the Act. The rental unit was suitable for occupancy, and that the Landlord addressed the Tenant's issues in a reasonable time frame.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and
- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant did not prove that rental unit was uninhabitable and I note that he remained in the rental unit. The Tenant did not prove that he had any losses or incurred any costs aside from hydro (electrical) costs while he was waiting for boiler to be repaired or while the pest control company identified, located and controlled the racoons. The Tenant failed to provide any copies of receipts for his alleged purchase of a heater and extension cord, and failed to provide the Landlord with an opportunity to provide these to him prior to his alleged purchase in March 2011. The Tenant also failed to provide any evidence to support his \$1000.00 claim for ten hours at his management rate of \$100.00 or his claim for \$500.00 in damages. Regardless, even if the Tenant had provided such evidence, he would not be entitled to such a high rate of pay for such activities. The Tenant resided in the rental unit at all material times and did not stay in a hotel or elsewhere. The Tenant has not provided sufficient evidence to support that he is entitled to anything other than his increased hydro (electrical) costs.

At the hearing the parties reached an agreement with regards to reimbursement of the hydro (electrical) costs. The Landlord agreed to calculate the difference and reimburse the Tenant by cheque for each period during which his hydro (electrical) costs increased due to the boiler issues. The Tenant stated that he will ensure he has submitted all of the hydro bills to the Landlord so that the reimbursement can occur. The Tenant has not sought an order for a specific amount for the hydro (electrical) costs and has agreed to work it out with the Landlord. Should the Tenant and Landlord fail to adequately resolve this, I grant the Tenant leave to reapply for reimbursement of increased the hydro (electrical) costs that he incurred during the period where the boiler was not functioning and he had to rely on electrical heaters.

Aside from the hydro (electrical) cost difference during the period where the boilers were not functioning, I find that the Tenant is not entitled to any compensation for losses or damages under the Act, regulation or tenancy agreement. As a result the Tenant's claim is dismissed.

Conclusion

The Tenant has leave to reapply for reimbursement of increased hydro (electrical) costs that he incurred during the periods where the boiler was not functioning, in the event that the Landlord fails to reimburse him the cost difference for these periods. The balance of the Tenant's claim is dismissed.

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: December 08, 2011.

Residential Tenancy Branch