



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order and an order to reduce rent.

The hearing was conducted via teleconference and was attended by one of the tenants, her witness and the landlord and his assistant.

At the outset of the hearing the tenant acknowledged the tenants had vacated the rental unit and as such there is no longer a need to contemplate a rent reduction, I have amended the Application to exclude the matter of a rent reduction.

In addition the tenant identified that she was only seeking \$2,000.00 in compensation and not the \$4,000.00 identified on her Application, as such I have amended the tenants' Application to seek \$2,000.00.

While the tenant had arranged for a witness to attend the hearing the witness was not called to provide any testimony.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on April 1, 2011 for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 paid.

The tenant testified that on Sunday January 22, 2012 they heard noises in the basement and discovered the sewer had backed up and that the basement was flooded

with sewage. She went on to say that they left a message at the contact number they had for the landlord and that he returned their call on Monday night.

The tenant also testified that when they hadn't heard back from the landlord they called around to try and find a plumber and found no one to be available until at least the following Tuesday. They were able to reach one company who would not accept the work until they had spoken to the landlord. Once the landlord and company spoke it was arranged the earliest they could attend was Friday.

When the plumbers came on Friday they investigate and found a blockage in the line but they could not return until Monday to complete the work. The tenant testified the landlord agreed to have the male tenant clean up the basement, no agreement was made on any amount of compensation for the work.

The tenant testified there were additional problems with the tenancy right from the beginning when they were instructed not to use any water facilities while repairs were underway which took about a week; in addition the tenants were never shown where the electrical box was and went without power for part of the house for 3 days when a breaker blew; and problems with the furnace in 40 below weather when the furnace would only heat the house to 69 degrees.

The tenant submitted an estimate for cleaning services provided by professional cleaners for similar circumstances. The estimate includes the follow:

Description	Amount
Anti-microbial disinfectant to reduce worker exposure	\$450.00
Low pressure wash – all concrete flooring	\$750.00
Personal protective equipment and supplies	\$100.00
Rental of 3 dehumidifiers for 2-3 days	\$570.00
Total	\$1,870.00 plus taxes

The tenant testified the male tenant cleaned up the mess everyday for 6 to 8 hours per day from January 23, 2012 to January 30, 2012. The tenants provided a copy of an invoice dated February 17, 2012 for \$2,000.00 for sewage clean-up for dates from January 22 to January 30, 2012.

The landlord testified, that he had not agreed to have the tenants do any of this work and that he had hired the plumber to take care of all of this work and that he had paid

the plumber for services. The landlord did not provide a copy of any invoices from the plumber to confirm work completed.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

However, Section 33 of the *Act* stipulates that a tenant may have emergency repairs made if emergency repairs are needed; the tenant has attempted to contact the landlord twice; and following those attempts the tenant has given the landlord reasonable time to make the repairs.

Section 33 also defines emergency repairs as urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing, among other things, damaged or blocked water or sewer pipes or plumbing fixtures.

I accept the tenants contacted the landlord and that the landlord did arrange to have the plumbing work completed, however I find the tenants have established the landlord failed to arrange to have someone attend the rental unit to clean the basement both in terms of the tenants health and safety and to prepare for the plumbers to be able to complete their work. As such, I find the tenants are entitled to compensation for the landlord's failure to comply with his obligations under Section 33.

I accept, from the tenant's undisputed testimony, that the male tenant completed the work as describe, however as to the value of that work, I note from the estimate from the professional service provided submitted by the tenants the professionals would be

using a disinfectant for the safety of their staff; protective equipment and supplies; and the rental of 3 dehumidifiers. There is no evidence or testimony that the tenants incurred any of these costs in their process of cleaning.

As such, the only applicable amount, based on the tenant's testimony that the male tenant used a garden hose to clean flooring. In addition, based on the invoice provided by the tenants to the landlord the tenants are seeking \$35 - \$50.00 per hour for cleaning. I find this amount to be unreasonable however I do accept the amount of \$750.00 as outlined in the service provider's estimate for the specific work completed by the tenants to be adequate compensation.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$800.00** comprised of \$750.00 compensation and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: April 23, 2012.

Residential Tenancy Branch