



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an application by the tenant for monetary compensation for damage or loss under the Act, regulation or tenancy agreement. The tenant and two agents for the landlord participated in the teleconference hearing.

The hearing first convened on April 13, 2012. On that date, the landlord requested an adjournment, as they had only received the tenants' evidence four days before the hearing, and had not had sufficient time to submit their evidence in response. I determined that it was appropriate in the circumstances to adjourn the hearing.

The hearing reconvened on May 8, 2012. On that date, each party confirmed that they had received the other party's evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on January 1, 2008 and ended on December 31, 2010. The tenant and her daughter were the occupants of the rental unit. The monthly rent at the outset of the tenancy was \$1060. The rent increased to \$1099 on January 1, 2009 and remained at that rate until the end of the tenancy.

Tenant's Evidence

From the beginning of the tenancy, there were many issues that made the unit unsuitable for living. The tenant informed the landlord of the problems numerous times, in writing and phone calls, and the landlord did little about it.

The tenant has claimed monetary compensation for the following issues:

- 1) There were loud banging noises from the heater all day and night long, which prevented the tenants from sleeping two to three nights a week. The tenants complained to the landlord but they never responded. As a result of their disrupted sleep, the tenants missed a total of 17 days of work. The tenant has claimed \$4,000 in compensation for the banging noises. The tenant submitted three letters to the landlord, dated March 25, 2008, January 28, 2009 and October 13, 2009, regarding the banging noises from the heater.
- 2) At the outset of the tenancy the heaters were not on and the rental unit was very cold. The tenants wrote about 4 letters to the landlord but the landlord did not immediately respond. The tenant has claimed \$1,000 for discomfort due to the lack of heat and a week of lost wages.
- 3) The tenant believed that the landlord opened the tenant's storage locker without the tenant's permission by removing and replacing the hinges on the storage locker door. The tenant has claimed \$1,000 for violation of privacy and resulting distress.
- 4) The toilet flush broke at one point due to wear and tear. The tenant informed the landlord about the problem 5 or 6 times, but they never repaired it. The tenant had to fill a bucket and pour water into the toilet to flush it. For this issue the tenant has claimed \$1,000. The tenant submitted one undated letter to the landlord regarding the broken toilet flush.
- 5) The pipe under the kitchen sink leaked for over a year, and created a large amount of mould and a bad smell. The bathroom sink leaked for over two years, and the floor of the cabinet turned black and rotted until there were holes in the bottom of the cabinet. The tenant wrote letters to management more than six times requesting repairs. For these items the tenant has claimed \$2,000. The tenant submitted four letters to the landlord, dated March 28, 2009, July 2, 2009, March 17, 2010 and one undated, regarding the bathroom sink and cabinet; and one letter dated November 6, 2009 regarding the kitchen sink and cabinet.
- 6) On more than 20 different occasions, the water was too cold to shower. As a result the tenant got sick, and had to go to a friend's house to shower on at least 5 occasions. The tenant has claimed \$2,000 for this issue.

- 7) The elevators were constantly out of service and on at least 6 occasions they were out of service for the whole day. The tenant has bad knees and suffered physical pain whenever she had to use the stairs. For this issue the tenant has claimed \$1,000.
- 8) From the beginning of the tenancy to the end, there were large numbers of ants in the rental unit kitchen. If there was any food left in cabinets or on the counter the ants got into it and the food had to be thrown out. This happened more than twenty times. For this issue the tenant has claimed \$1,000. The tenant submitted two letters to the landlord, dated October 15, 2008 and September 12, 2009, regarding the ants.
- 9) The tenant finally had to move out of the rental unit because of all the problems. For the costs of moving, including renting a moving truck, hiring labour, moving fees for internet and phone and lost income due to missed days of work, the tenant has claimed \$2,000.
- 10) The landlord not only failed to respond to most of the tenant's repair requests, but when the tenant spoke to the building manager in person they always yelled at the tenant and acted in a very aggressive manner. The building manager would go on vacation for two or three weeks every year and nobody else was appointed to take responsibility. The tenant has therefore claimed aggravated damages of \$6,000.

Landlord's Response

There are 185 units in the building, and it is 40 years old. The tenant had unrealistic expectations regarding the condition of the building and the rental unit, because "you can't make an old thing new."

The landlord could not act on problems unless they were informed of the problems. As soon as they were informed, they acted on the problems. All tenants are supposed to use the form provided to request repairs, but the tenant did not use it and therefore did not grant the landlord written permission to enter the rental unit. The tenant did not provide their telephone number, so the building manager could not call them back. The landlord recalled receiving some of the tenant's notes requesting repairs, and then they would deal with it. The landlord acknowledged that they threw out some of the notes after the tenancy ended.

The landlord's response to each of the tenant's monetary claims was as follows:

- 1) Heater noises – when the tenant contacted head office, the landlord responded, and provided invoices to show that the work was done promptly. Some noise is

unavoidable. The landlord submitted invoices showing that the boiler was serviced on 16 dates during the tenancy.

- 2) Lack of heat – the heat in the building is never turned off. The tenant never complained about the heat.
- 3) Lock removed from storage locker – the landlord never removed the lock or hinges on the tenant's storage locker.
- 4) Toilet not flushing – the maintenance manager recalled that the tenant had some issues with her toilet, and he promptly fixed it.
- 5) Bathroom and kitchen sinks – these issues were dealt with in a timely manner. The landlord submitted an invoice showing that the kitchen counter top was replaced on February August 17, 2010.
- 6) Cold showers – the tenant never reported this problem. However, small fluctuations are common in apartment complexes.
- 7) Elevator issues – the elevators are serviced monthly, and if a breakdown occurs, an emergency call out is made immediately. The landlord submitted their elevator maintenance contract as evidence.
- 8) Ants – the tenant never made any complaints to the landlord about ants.
- 9) Moving expenses – the tenants chose to move out. In their notice to vacate, the tenant indicated that the reason for vacating was because of the rent increase.
- 10) Aggravated damages – it was very hard to deal with this tenant from day one. The tenant preached to the building manager about how to manage the building. The building always had a relief manager on duty to cover evenings, weekends and holidays, and the head office always responds to tenants in a timely manner.

Analysis

Upon consideration of the evidence, I find as follows.

- 1) Heater noises – I accept the evidence of the tenants that they served the landlord with three written complaints about the noise from the heating system, and that the tenants were negatively affected by the noise. The landlord did not provide evidence of their response to the tenants' written complaints. I therefore find that the tenants are entitled to compensation for the ongoing heater noises. However, the tenants did not provide sufficient specific information regarding the levels of noise, the duration, or the amount of lost wages for lost days of work. I find that for heater noises the tenants are entitled to a nominal amount of \$150.
- 2) Lack of heat – the tenant did not provide sufficient evidence to support this portion of their claim.
- 3) Lock removed from storage locker – the tenant did not provide sufficient evidence to support this portion of their claim.

- 4) Toilet not flushing – the tenant did not provide sufficient evidence to show when this problem occurred or how long the landlord took to respond to their note, so they are not entitled to compensation for this issue.
- 5) Bathroom and kitchen sinks – I accept the evidence of the tenants that they served the landlord with four written complaints about the leak under the bathroom sink and one written complaint about the kitchen sink. The landlord did not provide evidence of their response to the tenants' written complaints, and the landlord's evidence that they replaced the kitchen counter top does not address the question of a leak under the kitchen sink. I therefore find that the tenants are entitled to compensation for the leaks and resulting mould, smells and non-useable cabinet space, particularly in the bathroom. However, the tenants did not provide sufficient specific evidence, such as photographs of the damage or independent testimony from witnesses who viewed the damage. I find that for the leaks the tenants are entitled to nominal compensation of \$250.
- 6) Cold showers – the tenants did not provide sufficient evidence to support this portion of their claim.
- 7) Elevator issues – the tenants did not provide sufficient evidence to support this portion of their claim.
- 8) Ants – I accept the evidence of the tenants that they served the landlord with two written complaints about the ants. The landlord did not respond to those written complaints. I therefore find that the tenants are entitled to compensation for the ants. However, the tenants did not provide sufficient specific evidence, such as photographs of the ants or independent testimony from witnesses who viewed the ants. I find that for the ants the tenants are entitled to compensation of \$100.
- 9) Moving expenses – the tenants chose to move rather than apply for orders for repairs. The tenants are not entitled to compensation for moving expenses.
- 10) Aggravated damages – under the Residential Tenancy Act, a landlord is required to maintain and repair the rental unit to meet health, safety and housing standards required by law and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. When the rental unit or residential property requires repairs, the tenant must notify the landlord. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs. In this case, I have found that the landlord failed in at least some instances to promptly and adequately respond to the tenants' complaints, and the issues of mould and ants could have posed health risks to the tenant. The evidence from both parties suggests that relationship between the tenant and the landlord was acrimonious from the outset. Despite the landlord's opinion of the tenant, they were obligated to address each of the tenant's written requests for repairs. However, I find that the tenant ought to then have addressed the problems during the tenancy by applying for repair orders

under the Act. I therefore find that the tenant is not entitled to aggravated damages.

As the tenant's claim was mostly unsuccessful, I find that the tenant is not entitled to recovery of their filing fee for the cost of the application.

Conclusion

The tenant is entitled to monetary compensation of \$500. The remainder of the application is dismissed.

I grant the tenant an order under section 67 for the balance due of \$500. This order may be filed in the Small Claims 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: May 22, 2012.

Residential Tenancy Branch