



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords make repairs to the unit, site or property; and to recover the filing fee from the landlords for the cost of this application.

The hearing commenced on May 16, 2012 but did not conclude and was adjourned for a continuation of the testimony to be heard on June 12, 2012. The tenant and one of the named landlords attended the conference call hearing on both dates, and the landlord called one witness. Both parties gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other and the witness on the testimony and evidence provided, all of which has been reviewed and is considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlords make repairs to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on February 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. Prior to the commencement of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$550.00.

The tenant testified that rent was agreed at \$1,100.00 per month, but the landlord told the tenant on April 1, 2012 that rent was being reduced by \$100.00 per month until

repairs are made. The rental unit contains mould and the smell is overpowering; the tenant got sick but only while inside the rental unit. The neighbors told the tenant that the last 4 tenants were getting sick and the neighbors believed they all moved due to illness.

The tenant also testified that the property manager promised repairs with the heat, lack of water and a horrible smell in the basement. Further, the front door didn't work and the house was filthy. The tenant could not move in and hired cleaners who had to clean without any running water. The tenant had to hound the property manager for water and heat and the tenant fixed the door himself.

The tenant further testified that the ground is wet under the crawl space and musty smelling. Cracks exist, and creatures, such as spiders, as well as wood chips are in the crawl space. A previous flood wasn't dried out properly. The landlord rented dehumidifiers and the property manager placed them in the crawl space in mid-February. That helped, but the property manager didn't fully dry the crawl space and didn't remove rotten materials, such as wood against the wall. The tenant provided a letter to the property manager requesting repairs, and the landlords said they would fix it but didn't. After the tenant gave a second letter, the landlords again promised, but didn't fix it, so the tenant called a restoration company on March 22, 2012. They suggested that the house had to be jacked up and the crawl space sealed, or that all cracks needed to be filled and a silent fan installed in the crawl space creating a vacuum.

Three small vents are wide open with no covers on them and 2 cats are living down there. The landlord was given a copy of the recommendations made by the restoration company, also a mould remedial specialist company, who also said they could complete the repairs right away if they received the landlord's consent. The tenant gave it to the landlord and agreed to pay for it if the landlord would reimburse the tenant. However, the restoration company wouldn't do the work without the landlord's consent and the landlord refused to consent. The tenant provided a third letter to the property manager who suggested a request for a rent reduction.

The tenant received a spider bite on his nose which became infected and spread into the tenant's head. The tenant was incapacitated for 3 days and has still not healed properly. The first doctor gave the tenant antibiotics and another doctor referred the tenant to a specialist. The tenant is currently awaiting an appointment, and the doctor told the tenant the tenant may need a private laser skin specialist to prevent scarring.

The tenant purchased peat moss and other yard materials to fix up the yard of the rental unit in April, 2012 and the landlord agreed to pay for those materials. The landlord also

gave the tenant a \$100.00 reduction in rent for having no heat and another \$100.00 for no water. The tenant also purchased materials to fix the crawl space. The tenant paid cleaners \$100.00 in February, 2012 and was reimbursed that amount from the landlords; paid full rent for March, 2012; the tenant requested a rent abatement for no heat and no water and the landlord reduced the rent for April by \$200.00 and said that the rental amount would be decreased to \$1,000.00, and gave the tenant a \$100.00 retroactive rent reduction for February and March, 2012; the tenant purchased peat moss and grass at a cost of \$173.76 and the landlord reduced the rent by that amount and by an additional \$100.00; the tenant paid \$1,000.00 for June, 2012.

The rental unit still requires another application of mould spray, cracks under the kitchen sink and the floor in the hallway around doorways, laundry room and bedrooms still require sealing. The tenant asks that all cracks in the house be sealed, moisture in the crawl space fixed, the bathroom floor be fixed, remove the cats, seal the vents, and fumigate for insects and spiders.

The tenant also claims \$1,500.00, being 1 ½ month's rent, for stress and loss of productivity in the tenant's business.

The landlord's witness is a property manager, and testified that the previous tenants had called and told the witness about mould in the bathroom. The property manager responded that they could end a tenancy for health concerns. They had already found a place to move to. The witness investigated the rental unit and found rotten wood, not mould. The landlord and a worker ripped out the wood, put in new wood in the bathroom and replaced the base boards. A few days before this tenancy began a water pipe broke in the crawl space but since the rental unit was vacant it wasn't noticed. The witness called the city asking for the water to be turned off but by then about 2 ½ feet of water had gathered in the crawl space. The landlord said he'd get a pump truck but the water had dissipated except for condensation. Two dehumidifiers and fans were placed in the crawl space before the tenant moved in.

The witness then asked the city to turn the water back on and they said it was on and must be a problem with the pipes. The witness put heaters in and called the city again who sent out another worker. Ultimately it was found that the City had not turned the water on. The tenant was left without water for 3 or 4 days and rent was reduced.

The witness also testified to placing hospital strength mould killer in the rental unit and the tenant said that the smell was gone, but it came back. The tenant was given \$100.00 per month reduction in rent, and the landlord has put thousands of dollars into

the rental unit and can't do anything more. The tenant complains about cracks but it's an old house that has been completely been renovated. The witness stated that the tenant will likely never be satisfied.

No health issues from previous tenants have been reported except for one who stated that he slept outside.

The landlord testified that pipes had frozen and burst causing water to collect in the crawl space. The landlord is not aware what may have happened to the covers on the vents, and the landlord did not know anything about cats living in the crawl space.

The landlord's insurance adjuster inspected and said there is no damage to the upstairs but it took a long time for them to reply and eventually denied the landlords' claim. Since the insurance company was involved, the landlord could not go ahead and had to wait for their response.

The landlord also called a restoration company in April who stated that the smell and dampness is from cat urine and feces that got wet. The proper solution would be to remove the dirt from inside and replace it with fresh dirt. Another restoration company said the same thing and that spraying won't help. They provided the landlord with a number to call, but the landlord has to wait a month because they are too busy to respond. The landlord then tried a septic company because a hydro vac truck is needed, and they don't have one available. Another company looked at the job the day of this hearing, but the landlords did not yet have a proposal from them, and another is arriving to inspect tomorrow. Both companies told the landlord that the smell is not mould, but cat feces.

With respect to the bathroom floor, the landlord testified that it was installed about a year ago. The tenant told the landlord that it needs a baseboard and paint, but the tenant agreed to do the repairs and the landlord agreed to pay for them. The landlord purchased the supplies and agreed to pay the tenant 2 or 3 hours of labor for his time.

The landlord further testified that nothing is known about holes in the floor, but the landlord will repair it if it's required.

The landlord further testified that no previous tenants have ever complained about mould in the rental unit.

Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant, having regard to the age, character and location of the rental unit. In the circumstances, I find that the rental unit is in need of repair, but I also find that the landlords have taken steps to meet that legal requirement. I also accept the testimony of the landlord that the landlord could not act on an insurance claim until hearing from the insurance company because that might jeopardize the landlord's claims. It's also clear in the evidence that the landlords have offered and provided the tenant with rent abatement and reimbursement of bills provided by the tenant in an effort to correct the situation. The *Act* states that a landlord must compensate a tenant for any service or facility agreed upon but not provided, and I find that the landlords have provided some compensation to the tenant during the course of this tenancy. I find that the landlords have already given the tenant rent abatement in the amount of \$100.00 for each of the months of February, March, April, May and June, 2012, although the rent abatements for February and March were provided to the tenant in April, 2012. The landlords also gave the tenant rent abatements in the amount of \$100.00 in February for cleaning and \$200.00 during the month of April for no heat or water.

I also accept the testimony of the landlord's witness that the rental unit is an old house that has been renovated, but I do not accept the statement that the tenant will never be satisfied. I find that the rental unit is in need of more repairs and I find that the tenant has established that the tenant has contacted the landlords or the landlords' property manager numerous times over a few months, with little success.

With respect to the health issues and spider bite alleged by the tenant, I find that there is insufficient evidence before me to establish that the landlords are responsible. The medical evidence provided by the tenant merely states that the tenant's symptoms may be related to mould in the house. There is no conclusive evidence of that, nor that it was actually a spider that bit the tenant, or that, if it was a spider bite, that it happened in the home as a result of the landlords' failure to maintain the rental unit.

In the circumstances, I find that the tenant has established a claim in the amount of \$300.00 per month from the commencement of the tenancy for loss of enjoyment of the rental unit, and the tenant has already been reimbursed \$100.00 per month by the landlords for the months of February through June, 2012. The tenant requests an order that the rental amount remain at \$1,000.00 per month, but has not made that application formally. I further find that there is no reason for me to reduce the monthly rent payable if the repairs are made.

I further order the landlord to make the following repairs by the end of July, 2012:

- Complete another application of mould spray in the crawl space;
- Seal the cracks under the kitchen sink, floor in the hallway, around doorways, around the laundry room doorway and bedrooms;
- Ensure the covers on the vents in the crawl space are secure;
- Ensure that the crawl space is kept dry.

If all repairs above are completed by the end of June, 2012 the tenant will pay the full amount of rent in the amount of \$1,100.00 for July, 2012. If the repairs are not completed by June 30, 2012, the tenant will be required to pay \$800.00 rent for the month of July, 2012. In the event that the repairs are not completed by July 31, 2012, the tenant will be permitted to reduce rent to \$800.00 per month until all repairs are completed, and the tenant will be at liberty to apply for further relief.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant the tenant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,050.00. This amount may be deducted from a future month's rent payable or otherwise recovered.

I further order the landlords to make the repairs described above by July 31, 2012. If the landlords fail to do so, the tenant will pay rent in the amount of \$800.00 per month until the repairs are made, and the tenant will be at liberty to make a further application for monetary compensation for the landlords' failure to comply with this order.

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: June 19, 2012.

Residential Tenancy Branch