



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the tenant was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are 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?

Background and Evidence

Both parties agree that this month to month tenancy started on February 01, 2012. The parties had a verbal agreement for the tenant to rent a trailer for the monthly rent of \$500.00.

The tenant testifies that when he first looked at the unit he noticed that the water was brown and had a foul smell. He questioned the landlord about this and was told that no other tenants had complained about the water. The tenant moved into the unit but could not use the water to drink, cook, wash or do laundry as it continued to be discoloured and have a foul smell. The tenant testifies that he again brought this to the landlords' attention and the tenant states the landlord told the tenant the landlord would dig a new well.

The tenant testifies that he was subjected to health risks due to the condition of the water. The tenant testifies that he sent a sample of the water to the Northern Health Authority for analysis. The tenant testifies that the report came back from the Health Authority showing the water is bacteriological unsatisfactory and contains E-coli and Coloform. The tenant has provided a copy of this report in evidence.

The tenant testifies that he had to rent a motel room in order to have a shower and the tenant has provided receipts for these motel rooms spanning a period of February 16 to June 7, 2012. The tenant seeks to recover the cost of these motel rooms and has provided some documentation from the landlord in which the landlord agrees the landlord will be accountable for the cost of the motel rooms every seven days throughout the tenancy due to the condition of the water.

The tenant originally claimed the sum of \$1,139.00 however the tenant has asked to amend his application to recover the sum of \$1,424.84 as the tenant has had to continue to use motel rooms since he filed his application. The tenant has provided copies of most of the motel receipts.

The tenant also seeks to recover the fuel costs he incurred in being away from his residence traveling to the motel and to do laundry. The tenant and landlord agree the distance is approximately 50 kilometres. The tenant testifies that the landlord agreed to pay \$60.00 towards the tenant's fuel costs but the tenant states this offer is inadequate. The tenant originally applied to recover the sum of \$1,374.29 and has asked to amend

this cost as additional costs have incurred since the tenant filed his application. The tenant now seeks to recover the sum of \$1,647.44 and has provided receipts for the fuel costs claimed.

The tenant testifies that he also incurred some expense for meals while he was unable to stay in his unit. The tenant has provided receipts for the period between May 24 to June 07, 2012, to a total sum of \$100.64.

The tenant seeks to recover the over payment on his security deposit of \$250.00. The tenant testifies that the landlord charged the tenant a \$500.00 security deposit at the start of the tenancy. As the tenants rent is \$500.00 per month the tenant states the maximum the landlord is allowed to charge is \$250.00 for a security deposit. Therefore, the tenant seeks to recover the overpayment of \$250.00.

The tenant seeks to recover the rent paid for the unit for February, March, April and May, 2012 to the sum of \$2,000.00. The tenant states the landlord was aware there was a problem with the water since the start of the tenancy and has failed to comply with the *Act* to ensure this essential service is provided to the tenants unit. The tenant states he has not paid rent for June and the landlord has served the tenant with an invalid 10 Day Notice. This 10 Day Notice was e-mailed to the tenant and the Notice has a different address on it.

The landlord testifies that they do not have a problem paying the tenants motel bills and have sent the tenant a letter to this effect. The landlords agree to pay motel bills for every seven days over the term of the tenancy. However, the landlords do dispute the tenants claim for fuel costs as the landlord states the tenant has claimed for his entire fuel usage and would have had to use fuel for his daily living and work anyways.

The landlord testifies that the other landlord did offer the tenant compensation of \$500.00 towards the tenants rent due to the problem with the water but they dispute the tenants claim to recover all the rent paid for the term of the tenancy. The landlord

testifies that they have now had to shut off the water supply to the tenants unit. The landlord testifies that at the start of the tenancy the other landlord thought the problem with the water discolouration was because the unit had not been used since the last tenant moved out in September 2011. The landlords thought the water would clear up after it had been used for a while. The landlord testifies that they did not receive information from the tenant about the Health Authorities findings with E-coli until April 27, 2012.

Analysis

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 or 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 that can verify the actual monetary amount of the loss or damage. 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.

I have considered the evidence and testimony of the parties and find the tenant has provided sufficient evidence to show that the water to the tenants unit is contaminated with E-coli and is bacteriological unsatisfactory. The tenant has satisfied me that the

landlord was aware of this problem with the well water and had agreed to dig a new well; however the landlord failed to do this within a suitable time frame leaving the tenant no recourse but to shower elsewhere. I am therefore satisfied with the undisputed claim for motel costs. Consequently, I find in favor of the tenants claim for the sum of **\$1,424.84** for motel rooms every seven days for the period of the tenancy.

The tenant has also applied for the fuel costs the tenant incurred as a result of having to travel extra miles to the motels and to do laundry. The tenant has provided receipts totaling \$1,647.44; however, I am not satisfied that the fuel claimed is the actual amount the tenant unused purely for additional journeys to and from a motel and to do laundry as the tenant would also use his truck for business, food shopping and other personal use. The tenant has provided no brake down of the fuel costs solely associated with the travel to the motel and for laundry therefore I find the tenant has not met the burden of proof in this matter and I must limit the tenants claim to a sum of **\$400.00**.

With regard to the tenants claim for food to the sum of \$100.64; I am not satisfied that the tenant is entitled to recover these costs as the tenant has not shown that these costs are associated to the loss of water in his unit and while I do accept that it would be difficult to cook without water the tenant has not met the burden of proof to show what steps the tenant took to mitigate his loss for example, by using bottled water.

With regards to the tenants claim to recover the overpayment of \$250.00 for the security deposit; I refer the parties to s.19 of the *Act* which states:

- 19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Consequently, I find the landlord did charge the tenant double the allowable amount of the security deposit. As such the tenant has established his claim to recover the overpaid amount of **\$250.00** from the landlord pursuant to s. 19(2) of the *Act*.

With regard to the tenants claim to recover the rent for February, March, April and May, 2012; I have considered the tenants arguments in this matter and find that the tenant did experience a hardship in having contaminated water to his unit and then losing the water to his unit. However, the tenant has continued to live in the unit and as such would be expected to pay some rent for this unit. S. 27(1)(a) of the *Act* states:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation

Consequently I find the landlord has terminated this facility to the tenants unit and I find the landlord has also failed to comply with s. 32 of the *Act* which states:

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.

Therefore, I find the tenant is entitled to compensation for the contaminated water and for having the water cut off to the tenants unit. I find however as the tenant has continued to reside in the unit I must limit the tenants claim to the sum of \$200.00 per month for February, March, April and May, 2012 to the total sum of \$800.00. At the time of the hearing the tenant had not paid rent to the landlord for June so I am unable to award compensation for this month.

As the tenant has been partially successful with this claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*. The tenant will receive a Monetary Order for the following amount:

Motel rooms	\$1,424.84
Fuel costs	\$400.00
Overpayment of security deposit	\$250.00
Compensation for contaminated water	\$800.00
Filing fee	\$50.00
Total amount due to the tenant	\$2,924.84

I strongly caution the landlord to ensure the problem with water is rectified as soon as possible. If the landlord fails to comply with s. 32(1) of the *Act* the tenant is at liberty to file a new claim for compensation.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,924.84**. The order must be served on the respondent 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: June 11, 2012.

Residential Tenancy Branch