



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, an Order for the landlord to make emergency repairs for health or safety reasons; an Order for the landlord to make repairs to the unit, site or property; other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on June 01, 2012. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the tenants appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the Act, Regulations or tenancy agreement?
- Are the tenants entitled to an Order for the landlord to make emergency repairs for health or safety reasons?
- Are the tenants entitled to an Order for the landlord to make repairs to the unit, site or property?

Background and Evidence

The tenant testifies that this tenancy started on October 01, 2011 for a fixed term of one year. Rent for this unit is \$1,850.00 per month and is due on the first day of each month.

The tenant testifies that the unit has a hot water heating system. The tenants found the water pressure to be very weak around April 20, 2012 so they contacted the landlord who called the City to come out to the property to have a look at the water pipes. The City did come to have a look but after two weeks the tenants had not heard anything from the landlord concerning this problem. The tenants had very low water pressure which prevented them taking proper showers and no heating. On May 01, 2012 the landlord came to the unit to collect the rent and the tenants' again informed the landlord that they had very little water. The tenant testifies that they paid their rent and the landlord told them he would have someone come out to fix the problem.

On May 01, 2012 someone came to the unit and dug up the asphalt at the front of the unit. The next day this person returned and fixed a pipe. After this the tenants state they had water in the bathroom but not in the kitchen and the tenants had to wash their food and dishes at the bathroom sink. The tenant testifies that they called the landlord again to tell the landlord they still had little water flow in the kitchen.

To date the landlord has not repaired the water problem. The tenants seek the sum of \$3,700.00 equivalent to two months' rent for not being able to take a shower from April 2012 to May 15, 2012, for having no heating system and for not having water in the kitchen from April 20, 2012 to the present date.

The tenant testifies that on June 05, 2012 they contacted an independent inspection company who came to carry out an inspection of the property as the tenants had concerns about other defects in the unit. The tenants have provided a copy of this inspection report which includes the inspector's findings and photographic evidence.

This report details many deficiencies within the property as follows:

No stair rails to the loft room and the upper floor; mould in the basement due to high humidity; lower back room has wet walls, flooring and ceiling and an odour of mould and mildew; loft room has no guard rail; loft room and upper area does not conform with head room height; upper back enclosed deck room has no safety rail or wall and the window area is simply covered with plastic sheeting and mesh screening with nothing to prevent falling from the second level; exterior deck is missing a guard rail and other rails are in a weak condition; missing connections not within junction box in garage; abandoned wires (unknown if they are live or not) creating a potential fire hazard; 30 amp breaker on sub panel will not reset indicating a short in the circuit; boiler was generally inspected it was leaking at time of inspection; and rodent droppings found in garage.

The tenant testifies that they have given the landlord a copy of this report and notified him of the repair issues however they have still not heard anything from the landlord concerning these health and safety issues and the tenants therefore seek an Order to end the tenancy as the landlord has not complied with the *Act*. The tenants have sent a notice to the landlord informing the landlord that the tenancy will end on June 30, 2012 due to the health and safety concerns outlined in the notice letter. This letter was served in person to the landlord on May 30, 2012.

The tenants seek an Order for emergency repairs and other repairs to the rental unit to protect future tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenant. I refer the landlord to s. 32 of the *Act* which details the landlords obligations to ensure a rental unit is fit for occupation:

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.

I am satisfied from the evidence and testimony provided that the landlord has not complied with s. 32 of the *Act* and the rental unit does not comply with health, safety and housing standards required by law and is not suitable for occupation by a tenant.

Consequently s. 45(3) of the *Act* states:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant has given the landlord written notice of the failure to comply with s. 32 of the *Act* and has provided the landlord with a list of deficiencies and the inspection report. In

addition to this I find the tenants have been living without a proper water flow to the property and the tenants have given the landlord written notice to end the tenancy. Therefore it is my decision that the tenants are entitled to end the tenancy in accordance with s. 45(3) of the *Act* on June 30, 2012.

I further find the tenants are entitled to compensation for living without proper water flow to their unit which is an essential part of their living accommodation, for a lack of heat for a period of time and for living with the other health and safety issues not rectified by the landlord after the tenants informed the landlords of the situation. Consequently, I find in favour of the tenants claim to recover the sum of \$3,700.00 from the landlords and a Monetary Order has been issued to the tenants pursuant to s. 67 of the *Act*.

With regards to the tenants claim for emergency repairs and other repairs, as the tenancy will end on June 30, 2012 no further Orders will be issued as they would not be enforceable.

As the tenants have been successful with their claim I find the tenants are entitled to recover their \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,750.00** comprised of compensation and the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I hereby Order that the tenants are entitled to vacate the rental unit on June 30, 2012.

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 21, 2012.

Residential Tenancy Branch