



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for compliance, repairs, emergency repairs; and, services or facilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the tenant established an entitlement to receive compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
2. Is it necessary to issue orders to the landlord to comply with the Act?
3. Is it necessary to issue repair or emergency repair orders to the landlord?
4. Is it necessary to issue orders to the landlord to provide the tenant with services or facilities?

Background and Evidence

The tenancy commenced September 2009 and the tenant currently pays monthly rent of \$1,250.00 plus parking. The rental unit is occupied by the tenant, two other adults and two children.

I have summarized the issues raised by the tenant and the landlord's responses as follows.

Hot water

At the time of filing this application the tenant was without hot water. During the hearing I heard that the tenant was without hot water from the period of July 19, 2012 through July 26, 2012.

The tenant was of the position the landlord did not employ qualified professionals to restore the hot water in a timely manner and did not treat the lack of hot water as an emergency repair. The lack of hot water caused a major inconvenience to the tenant with respect to bathing and washing activities. The tenant applied for compensation equivalent to one month's rent, or \$1,250.00, for the loss of hot water.

The landlord submitted that qualified professionals were employed by the landlord to address the issue with the boiler system. Two of the buildings on the property were affected and the hot water was restored for brief periods of time in an attempt to get the boiler working again. The cause of the problem turned out to be an underground leak. Once the location of the leak was determined new piping was installed and the hot water resumed. The landlord was of the position that the tenant's claim for \$1,250.00 to be unreasonable given the tenant still had use of the rental unit and other amenities, including laundry facilities.

The tenant submitted that the hot water supply stopped again on August 15, 2012, resumed August 16, 2012 and then as of August 17, 2012 the tenant has been without hot water. There have been no notices issued by the landlord with respect to issues with the hot water supply.

The landlord was aware of issues with the hot water supply as of August 18, 2012. In speaking with the maintenance staff and the plumber the landlord is aware that in the tenant's building there have been reports of a fluctuation between warm and hot water. The landlord is currently in the process of planning a major repair to the tenant's building in the near future but first tests and drawings have to be made. The landlord submitted that the tenant is the only person in her building complaining of a lack of hot water. In fact, another person reported that the water was too hot. The landlord is of the position the tenant has hot water based upon the supply of hot water in the building's laundry room.

The tenant was adamant that she is currently being supplied with very cold water only.

During the hearing, both parties agreed that the landlord will attend the rental unit at 11:00 a.m. this date, with the tenant's consent, to assess the temperature of the water in the tenant's unit.

Emergency Contact Information

It was undisputed that the tenant has been provided the phone number of the building manager. After 5:00 p.m. phone calls go to a voice messaging system.

In the past, the tenant has been told not to call the manager's number after 8:00 p.m. with respect to parking issues. The tenant was uncertain as to what to do in the event of an emergency.

The landlord explained that after 5:00 p.m. phone calls go to a voice message system which is then checked by the manager. If the message pertains to an emergency situation the manager will respond accordingly, no matter what time the call is made. The tenant was asked not to call after 8:00 p.m. with respect to parking issues specifically as the tenant had been calling late at night to report that a visitor would be parking on the property overnight. The late night phone calls involving parking issues were disturbing for the manager.

Balcony repairs

The tenant is seeking repairs be made to the balcony deck and railings.

The landlord was in agreement that repairs are necessary and the landlord will have the repairs made within the next two weeks.

Drywall repairs

The tenant is seeking that the drywall repair in the bathroom be sanded in painted. In addition, the tenant is seeking to have a proper patch or access panel installed in the closet.

The landlord was in agreement that an access panel needs to be installed in the closet and will do so within the next week.

Analysis

Upon consideration of the evidence before me, I provide the following findings and reasons.

Hot Water

Residential Tenancy Policy Guideline 16: *Claims in Damages* provides information for parties seeking compensation against another party. Generally, in the absence of negligence on part of the landlord the tenant's entitlement to compensation for a breach of the tenancy agreement or Act is limited to the loss of use or enjoyment of the rental unit. The policy guideline provides, in part:

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the

circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. **If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.**

[my emphasis added]

Considering the testimony presented to me and the photographs provided by the landlord I accept that the repair required to the boiler system was significant and I find insufficient evidence that the time to repair the system was due to negligence on part of the landlord. Nevertheless, I also find that 8 days is a significant period of time to go without hot water and, as provided in the policy guideline, I find the tenant entitled to compensation since the landlord did not provide the services and facilities agreed upon.

With respect to the amount of compensation the tenant is entitled to receive, I find the tenant's request for the equivalent of a month's rent to be unreasonable considering she had hot water for the other 23 days of the month and use of all the other amenities during the entire month. Factoring in the tenant's use and the rental unit and other amenities that were not disrupted I find a more reasonable award to 1/3 of the daily rent for eight days, or \$108.00.

The tenant is authorized to deduct \$108.00 from a subsequent month's rent in satisfaction of this award.

Emergency contact information

I am satisfied the landlord has complied with the Act by providing the tenant with a telephone number to call in the case of emergencies. As clarified by the landlord during the hearing, the tenant may call the phone number at any time in the case of an emergency. I make no further Order for compliance to the landlord.

Repairs and emergency repairs

Given the opposing evidence presented to me at the hearing I find I am uncertain as to whether the tenant's hot water supply is currently running cold, as submitted by the tenant, or fluctuating between warm and hot, as submitted by the landlord. While I appreciate the hot water lines are connected, I find the landlord's submission that there is hot water in the laundry room insufficient to satisfy me that the tenant has hot water in her unit. Therefore, **as the parties agreed to do during the hearing, the landlord is**

ORDERED to attend the rental unit for purposes of determining the current status of the hot water supply to the rental unit.

Upon determining the status of the hot water supply the landlord is expected to perform the necessary repairs within a reasonable period of time considering the status of the hot water supply. In other words, a supply of cold water only should be considered to be very urgent. Should the current supply of hot water remain an issue the tenant is at liberty to file another application seeking repair orders and/or compensation.

Upon review of the photographs, I am satisfied the rental unit requires repairs to the balcony and the drywall. I find the timelines given by the landlord during the hearing to be reasonable and I make the following ORDERS to the landlord:

1. Repair the balcony deck and railing within two weeks of today's date.
2. Install an access panel in the closet within one week of today's date.
3. Sand and paint the drywall repair in the bathroom within one week of today's date.

I find the tenant's application to have merit and I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The tenant has been awarded compensation totalling \$158.00 including the filing fee and the tenant has been authorized to deduct this sum from a subsequent month's rent. The landlord has been ORDERED to assess the current status of the tenant's hot water supply and make certain repairs as stipulated in this decision.

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: August 21, 2012.

Residential Tenancy Branch