



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, LRE

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for the cost of emergency repairs and to suspend or set conditions on the landlord's right to enter the rental unit.

The tenant, the landlords the landlords advocates attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The original documentary evidence and testimony of the parties has been reviewed and are considered in this decision. Both parties provided additional evidence which was not requested by the Dispute Resolution Officer for the reconvened hearing and this evidence has not been considered.

Preliminary Issues

There were two reconvened hearings to deal with the reminder of the tenants claim. An interim decision was made after the first hearing took place on August 23, 2012. The first reconvened hearing took place on September 26, 2012 and the second reconvened hearing took place on October 12, 2012.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order for other issues documented on the application?
- Is the tenant entitled to set or suspend conditions on the landlords' right to enter the rental unit?

Background and Evidence

The parties agree that this month to month tenancy started on April 01, 2012. It was determined at the first hearing that rent for this unit is \$300.00 per month due on the first day of each month.

The tenant seeks to recover the costs incurred for emergency repairs that the tenant testifies he completed in the unit and property. The tenant seeks to recover the sum of **\$600.00** to clean out a shed that contained rat and mouse droppings. The tenant testifies that the landlord told the tenant he had to remove his belongings from a storage space in the unit and could use the shed to store these belongings. The tenant testifies that he did not want to put his belongings into a space that was contaminated so he had to clean the shed first. The tenant testifies he spent 20 hours cleaning the shed at \$30.00 per hour.

The tenant seeks to recover the sum of **\$200.00** from the landlords to clean up some leaking water which the tenant testifies was caused by a broken shower outlet; this sum also includes washing the rags the tenant used to clean up the water. The tenant testifies this water was leaking into the bathroom and common areas such as the furnace room and under the stairs. The tenant testifies he spent 10 hours cleaning up at \$30.00 per hour. The tenant at first also claimed the sum of \$600.00 to do renovation

work in the bathroom but later withdrew this section as the landlords advocate pointed out that the tenant has also filed a claim in the provincial small claims court for renovations to the landlords' property.

The tenant seeks to recover the sum of **\$25.00** for the balance of Septembers rent which was not dealt with in the interim decision. The tenant seeks to recover the sum of **\$140.00** for emergency repairs to the outside of the property. The tenant testifies that the landlord brought to the tenants attention some cracks in the entry way and walls. The tenant testifies that the cracks in the entry way were a tripping hazard and the cracks in the wall were likely to cause water to leak into the tenant's rental unit. The tenant testifies that he spent four hours repairing the cracks at \$30.00 per hour.

The tenant seeks to recover the sum of **\$150.00** from the landlords in compensation for trespass into his rental unit. The tenant also seeks to recover the sum of \$520.00 for the illegal use of his rental unit when the landlords allowed their son to move into the tenant's rental unit from July 15, 2012 to August 15, 2012. The tenant testifies that as he had sole use of the rental unit the landlords did not have permission to move their son into the rental unit. The tenant testifies that the landlords' son also left a mess in the unit which the tenant had to clean up.

The tenant also asks me to consider his claim for compensation to the sum of **\$1,000.00** for the tenant's time and services in picking up the landlords' son's boxes from the greyhound depot. The tenant testifies that he made 25 trips to collect 4 boxes a trip. The tenant testifies that he numbered all the boxes and stored them securely.

The tenant seeks to recover the sum of **\$60.00** for two hours work to change a lock. The tenant testifies that the landlord changed the locks on the tenant's door and the tenant had to crawl through a window to get into his unit to remove the lock. The tenant testifies that there is now no lock on the door handle but there is a dead bolt.

The tenant seeks to recover the sum of **\$60.00** to remove the remainder of the landlords' sons' belongings to the spare room in the unit. The tenant has provided copies of invoices for the above sums as provided to the landlords. The tenant recognises that these sections of his claim are not classed as an emergency repair but as the landlords have had full disclosure of these parts of the tenants claim they should be considered.

The landlords advocate (TM) cross examines the tenant and asks the tenant why the tenant has filed a claim for \$3,000.00. The tenant replies that this was a rough estimate of the claim and the amount claimed is now actually lower. The advocate asks the tenant did the tenant serve notice to the landlords yesterday for the small claims court for the sum of \$4,245.00 as it appears as if the tenant is attempting to recoup money through both legal venues. The tenant replies that he did file a claim but the small claims court application is strictly for renovations done to the landlords' property which included renovations to the kitchen, bathroom, bedroom and living room. The advocate reminds the tenant that he has filed a claim for bathroom renovations as part of this claim also. The tenant testifies that he is only claiming costs to repair the broken water pipe in this claim and the two issues are separate.

The landlords advocate cross examines the tenant and asks the tenant to explain the invoice for the shed clean up as the dates on the invoice say May/June, 2012. The tenant testifies that only half the shed could be cleaned at a time due to the weather and it was cleaned over the period of time shown on the invoice. The landlords advocate asks the tenant to explain why is this is an emergency repair. The tenant testifies that the landlord knew there was rat feces in the shed and should not have asked the tenant to move his personal belongings to the shed and the health risk would fall under an emergency repair.

The landlords advocate asks the tenant about the water leak and whether this water leaked into the tenants unit. The tenant replies that water did leak into his unit and the common areas. The tenant testifies that the landlord had fitted a plastic shower pipe

before the tenant moved into the unit which had already leaked onto the floor and continued to leak every time the tenant had a shower. The advocate asks the tenant about the invoice for this work relating to the clean up and did the tenant observe this dirt and child filth before he moved into the unit. The tenant testifies that he had noticed it left from the previous flood and the previous tenants' child. The tenant states the landlord made arrangements for the tenant to do this work as the tenant had told the landlord he did not want to move into a dirty suite. The landlords advocate asks the tenant why the tenant moved into this unit if he had health and safety concerns prior to moving in. the tenant replies that he had arrangements with the landlord that the tenant would do the work.

The landlords advocate asks the tenant why the tenant is claiming repair work to the outside walls under an emergency repair if the landlord had asked the tenant to do this work. The tenant replies that the water would get into the unit from the landlords irrigation system and water coming from the roof when it rained. The tenant claims the landlord had warned the tenant about this and said the tenant could fix it. The landlords advocate asks the tenant if this was a repair or an emergency repair as the invoice is dated in July and the tenant moved into the unit in April. The tenant replies that the landlord should have done something about it. The landlords advocate asks the tenant if the tenant ever had water in his unit due to this. The tenant testifies that he repaired it before water came in. The tenant then testifies that water did come into the unit in April or May in the tool room, the kitchen and the carport.

The landlords advocate asks the tenant what date the landlord changed the locks. The tenant states he does not recall. The landlords advocate asks the tenant what the tenants understanding was about why the landlord changed the lock. The tenant replies that the landlord did this because the landlord thinks it is his right and to harass and intimidate the tenant. The landlord replaced the door knob with a lockable one where previously there had been a lockable door knob without a key and the latch had been disabled. The landlords advocate asks the tenant did the tenant use the landlords van to run personal errands and then collect the boxes from the Greyhound Depot. The tenant

replies that, no he had to collect 136 boxes. The landlords advocate asks the tenant if he kept a log of the dates and times he worked. The tenant replies no it was just an agreement between two men.

The landlord testifies that he told the tenant if he cleaned the shed out the tenant could use it for his own belongings. The landlord testifies that they did not agree to any monetary compensation for the tenant to clean out the shed and just agreed the tenant could use the shed. The landlord testifies that they changed the door knob to a lockable one to enable their son to be able to get into the unit. The landlord testifies that the tenant was offered a key but the tenant declined this and went through a window instead.

The landlord testifies that the water damage in the unit was going to be dealt with by the landlords but the tenant got to it before the landlords could do anything. The landlord testifies that he and the tenant then concentrated on the supply of water as the drain was an issue; however, the tenant decided that this was urgent and dealt with it only informing the landlords after the fact when the tenant presented the landlord with an invoice. The landlord testifies that the tenant has also overstated the water damage as no water entered the tenants unit and only some water got under the stairs and on the bathroom floor.

The landlord testifies that he did not give permission for the tenant to do any work on his own. The landlord claims that he worked with the tenant on the renovations and the tenant only wanted this work done because he was trying to impress his girlfriend who was coming to visit. There was never an agreement to pay the tenant.

The landlord testifies that there was never an agreement for the tenant to be paid to pick up the landlords' sons boxes. The tenant used the landlords' truck to collect these boxes and run his own errands.

The landlords advocate states that the tenant has provided no evidence to show that there were cracks at the entrance way that could be considered a hazard and the tenant has not made a case under the criteria for emergency repairs.

The tenant has applied for an Order to set or suspend conditions on the landlords' right to enter the rental unit. During the course of the hearing the parties came to a mutual agreement in this matter. The agreement is as follows:

- The landlords agree to fit a lockable handle on the tenant's bedroom door, the tenant's living room door and the exterior door to the tenant's unit within seven days of today's date.
- The landlords agree to provide a key to the tenant for these three locks.
- The tenant agrees to the landlords having a key for these three locks to be used in an emergency or after proper notice of entry has been given to the tenant.
- The landlords agree not to enter the tenant's rental space without providing proper notice to the tenant stating the date and time of entry and providing a valid reason for entry; or only entering if an emergency occurs.
- Both parties agree to set the days that both parties may use the shared laundry facilities and agree to abide by the agreed upon days.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover the cost of emergency repairs; I refer the parties to s. 33(1) of the *Residential Tenancy Act (Act)* which states:

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I also refer the parties to section 33 (3), 33(4) of the Act which states:

33(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

33(4) A landlord may take over completion of an emergency repair at any time.

The tenant testifies that he had an agreement with the landlord to carry out these repairs and prepared invoices for the landlord detailing the repairs and the costs sought. The landlords argue that they did not give the tenant permission to do repairs, the repairs completed are not emergency repairs and the tenant did not contact the landlord

on two occasions about the repairs or give the landlord reasonable time to make the repairs.

I will deal first with the tenants claim for the alleged emergency repairs to clean up the water leak and clean the rags used for this work at \$200.00; to clean the shed at \$600.00; and to repair cracks and tripping hazard of \$140.00. It is my decision that none of these repairs fall under the criteria of emergency repairs with the exception of repairs to the cracks in the walls and the tripping hazard which could be determined that the repairs were required for the preservation of property or for the health and safety of anyone. However, a tenant is required to follow section 33(3) of the *Act* if the tenant is performing an emergency repair and must make two attempts to contact the landlords and must give the landlords reasonable time to make the repair. The tenant argues that the landlord asked the tenant to make these repairs and the repairs were not identified by the tenant. Consequently, it is my decision that these repairs do not fall under the criteria of emergency repairs.

The landlords argue that the tenant just did repairs in the rental unit without the landlord permission; the landlords agree they did ask the tenant to paint some rooms in the rental unit and the rent was reduced from \$750.00 to \$400.00 for the three months but they did not give the tenant permission to carry out other repairs. The tenant contradicts this and states the landlords did ask him to do the repairs.

In this matter the burden of proof falls to the person making the claim and when it is one persons word against that of the other then that burden of proof is not met. The tenant has not provided any corroborating evidence to show that he had the landlords permission to do these repairs to the rental unit or that they had an agreement that the landlord would pay the tenant to do the repairs or to clean out the shed. Consequently the tenants claim for the above mentioned repairs is dismissed without leave to reapply.

With regard to the tenants claim for \$150.00 for trespass, \$520.00 for illegal entry, \$1,000.00 to pick up the landlords' son's boxes, and \$60.00 to remove the landlords'

son's belongings to the spare room; It is my decision that none of these areas of the tenants claim fall under emergency repairs. However as the tenant has fully disclosed what his claim is for in his documentary submissions I am prepared to deal with these issues today to give closure to the parties.

It was determined that the tenancy was for the sole occupancy of the tenant and the landlords did allow their son to move into the rental unit for the period of one month without the permission of the tenant. The landlords' argue that the tenancy was only supposed to be a fixed term for three months and the tenant should have moved out before their son moved in. At the original hearing it was determined that the tenancy agreement had not been initialled to specify that the tenant would move out at the end of the fixed term and therefore the tenancy reverted to a month to month tenancy.

Therefore the landlords should have given the tenant a Two Month Notice to End Tenancy for landlords' use of the property if they wanted their son to move in. By allowing their son to move into the unit the tenant is entitled to some compensation from the landlords. The tenant has claimed a sum for trespass and illegal entry. However I have limited the tenants claim to half a month's rent of **\$150.00** in compensation for having to share the unit for one month and the sum of **\$300.00** in compensation for the hardship and aggravation and loss of quiet enjoyment suffered by the tenant when the landlords' son moved into the tenant's rental unit.

With regard to the tenants monetary claim of \$1,000.00 to pick up boxes from Greyhound. The landlord contradicts the tenant and states the tenant used the landlords van and helped the landlord collect the landlords' sons' boxes but no payment was discussed or agreed upon. Again, I find when it is one person's word against that of the other then the tenant has not met the burden of proof that he had an agreement with the landlord to be reimbursed financially for this work. This section of the tenants claim is therefore dismissed without leave to reapply.

With regard to the tenants claim for \$60.00 to remove the landlords' son's belongings to the spare room; I am satisfied that the tenant did remove the landlords' son's belongings. As the landlords' son's belongings should not have been put in the tenants unit without permission then the tenant had a right to remove these. I therefore find the sum of **\$60.00** to be reasonable and award this sum to the tenant.

With regard to the tenants claim for \$60.00 to remove an illegally fitted lock on the door of his rental unit. The tenant argues that the landlord fitted this lock to harass and intimidate the tenant and the landlord only offered the tenant a key with stipulations. The landlord argues this was not the case and they changed the lock to allow entry to the unit to their son and they did offer the tenant a key but the tenant choice to entry the unit through the window. The tenant has the burden of proof in this matter that the landlords did not offer the tenant a key and due to the animosity between the parties I am not satisfied that the tenant has not met this burden of proof. Therefore, this section of the tenants claim is dismissed without leave to reapply.

The tenant has stated that a further sum of \$25.00 was outstanding at the original hearing for the rent decided upon. The tenant has requested to have this sum and any other compensation offset against the rent for September and October, 2012 which remains unpaid. I find there is an outstanding amount of **\$25.00** which was not dealt with at the original hearing when the rent issue was determined, therefore I will offset this sum against the outstanding rent for September, 2012.

The tenant has been partially successful with his claim and is entitled to a monetary award as follows.

Compensation for sharing rental unit	\$450.00
Removal of landlords sons belongings	\$60.00
Rent owed to tenant	\$25.00
Total amount due to the tenant	\$535.00

Conclusion

I HEREBY FIND in partial favor of the tenant's amended monetary claim. The tenant has requested that any monetary award be offset against the unpaid rent. The tenant is awarded the sum of \$535.00 and I have offset this against the outstanding rent of \$600.00 for September and October, 2012 leaving an outstanding balance of \$65.00 for October, 2012. This amount must be paid to the landlord. If the amount remains unpaid the landlords are at liberty to serve the tenant with another 10 Day Notice to End Tenancy.

Both Parties have reached an agreement during the hearing concerning the tenants claim to set or suspend conditions on the landlords' right to enter the rental unit.

This agreement has been recorded by the Dispute Resolution Officer pursuant to section 62 of the *Act* as documented above.

This agreement is in full, final and binding settlement of the tenant's application for this portion of the tenants claim.

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: October 12, 2012.

Residential Tenancy Branch