



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for damage or loss under the Act, to have the landlord comply with the Act and make emergency repairs to the unit, site or property.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on October 6, 2012, the landlord did not appear. I find that the landlord has been duly served in accordance with the Act.

The tenants appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to the hearing.

Preliminary Issue

At the onset of the hearing the tenants stated that they have provided written notice to end tenancy with an effective date of October 31, 2012, and are only proceeding with their claim for monetary compensation for loss and damage under the Act.

Issue(s) to be Decided

Are the tenants entitled to monetary order for compensation for damage or loss under the Act?

Background and Evidence

The tenancy began in July 2007. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenants.

The tenants testified that they had a good relationship with the landlord for the past five years and were not planning to move from the rental unit. However, after very recent incidents and the unusual behaviour of the landlord they no longer feel safe in their rental unit and the female tenant and the children are no longer residing in the unit.

The female tenant testified on September 19, 2012, the landlord attended their unit to complain about the tenants' use of an air conditioner and the landlord walked into their unit turning the air conditioner off. The female tenant stated the landlord then walked in to the laundry room and ripped out the wires to the heating system and said "it's going to be a cold winter" for you. The tenant stated she had to purchase a space heater to heat the unit as there was still no heat in the unit as of this hearing date. The tenants seek to recover the cost for the space heater in the amount of \$30.00. Filed in evidence is a photograph of ripped wires.

The female tenant testified after this incident the landlord crouched down and was glaring at her for an extended period of time. The female tenant stated it made her extremely uncomfortable and she left with her child and did not return to the unit until her husband came home from work. The female tenant stated when her husband returned home he went to speak to the landlord about the earlier incident and the landlord was mimicking her husband's words like a child.

The female tenant testified on September 20, 2012, at 4:30 am the landlord was knocking on the door harassing them and then tried to turn the door knob. The female tenant stated she called the police. A police file number was provided.

The female tenant testified on September 22, 2012, at 1:30 pm the landlord was repetitively knocking on the door and window in the living room and late the same day the landlord told us that we had to do our laundry elsewhere because we were polluting the environment and within minutes the power to their unit was turned off. The female tenant stated the landlord appeared to be very upset and admitted turning off the power and again he told us to go elsewhere to do our laundry. The tenant stated that her husband tried reasoning with the landlord and at the end they shook hands. However, the landlord was squeezing her husband's hand and would not let go and was trying to get him to wrestle.

The female tenant testified that on September 25, 2012, the landlord told them that they had to move all their belonging out of the front area storage which they have been allowed to use since 2007. The female tenant stated during this conversation she noticed that the landlord was wearing one of her husband's sweaters and is unsure where he got the sweater from, but thinks he may have taken it from their storage area.

The female tenant testified that on September 26, 2012, that 3:30 am her youngest child woke-up and she went to the child's room was the room was overpowered with the smell of gasoline. The female tenant stated upon investigation they found the landlord had placed a motorcycle in their front entrance storage area with their belongings and it

was leaking gasoline and the fumes entered into the child's room. The female tenant stated the child had to sleep in their room for the rest of the night. Filed in evidence is a photograph of a motorcycle which appears to be leaking fluid.

The female tenant testified that at 11:00 am on September 26, 2012, she moved all their belongings from the front storage entrance into their unit, however, it smelled of gasoline and it also took up most of their livable space as she no place else to store it on such short notice. The tenants seek to recover cleaning cost of \$500.00.

The female tenant testified that at 5:30 am on September 27, 2012, when her husband was leaving for work the landlord told them that they would be required to pay the full utilities bills for the entire house, instead of the one third they have always paid.

The female tenant testified that they decided because of the unusual behaviour of the landlord and the fact that all their items previously stored in the storage area crowded there unit and smelled gasoline it was unfit for them to continue to stay in the unit and she and the children would resided elsewhere until a new accommodation could be located. The female tenant stated that her husband would come back at night to ensure their belongings were safe.

The female testified at approximately 9:30 pm on September 27, 2012, they served the landlord with one month notice to end tenancy with an effective date of October 31, 2012, and the notice explained they no longer felt their family was safe. The female tenant stated at first the landlord was unusually quiet, however, within ten minutes the landlord put up spot lights and was shining them at their entrance doors and living room window and ranting uncontrollable, frightening her, and the children as they were being place in the vehicle. Filed in evidence is a copy of the notice to end tenancy and a photograph of a spot light outside their unit.

The female tenant testified when she came back to the unit the next day, September 28, 2012, to collect more of their belongings, she found a note posted to the door. The note stated they had to disconnect the water, gas and electric temporarily, as a water leak had been detected. The female tenant stated that landlord was not there, there was no trade's person onsite and there were no signs of a water leak and when she tried the water, it was not shut off. However, the gas and the electricity had been turned off. The female tenant stated later when she drove by the landlord was home and the power was back on. Filed in evidence is a copy of the note and a photograph of running water.

The female testified that they are seeking to recover a portion of rent for September 2012, in the amount of \$360.00 and all of their rent for October 2012, as she and the

children were not able to reside in the unit due to moving all their belongings from the storage area into their suite, which smelled of gasoline and that they were afraid with the landlord's unusual behaviour that the children's safety could be at stake. The tenants seek to recover \$1,260.00 in rent paid to the landlord.

The female tenant testified that due to the action of the landlord they are also seeking to recover the cost of having to rent a moving truck on October 31, 2012, in the amount of \$150.00. Filed in evidence is a Uhaul rental equipment estimate.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

Under the Resident Policy Guideline #1, the landlord is responsible for ensuring that rental units and property, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.

The evidence of the tenants was they were unable to use their rental unit as their family residence due to the unusual behaviour of the landlord in which they felt they were unsafe. The most significant incident was storing a motorcycle which was leaking gasoline inside the tenant's storage area, which was inside the residence - not in a garage and the fumes entered the child's bedroom while the child slept. This action put the child and the family at serious risk as exposure to gasoline fumes can seriously jeopardized the health and safety of all people residing in the residence. I find the landlord has failed to ensure the premises met the "health, safety and housing standards established by law". Therefore, I find the landlord has breach the section 32 of the Act.

Terminating or restricting services or facilities

- 27 (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, the landlord did not provide the tenant with proper notice to terminate the use of the storage area, this action by the landlord caused the tenants to move their belongings from the storage area into their unit, which caused the unit to be over crowded, and these items smelled of gasoline. The photographs submitted supports the unit was overcrowded. Therefore, I find the landlord has breached section 27 of the Act.

Protection of tenant's right to quiet enjoyment

- 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference

Further, the behaviour of the landlord ripping out the wires to the heating system, turning the power off to the rental unit, wearing the male tenant's clothing, placing spot lights up and shining them on the tenants unit is a breach of the tenants' right to quiet enjoyment.

As a result, of the above findings, I find the tenants suffered a loss due to the actions of the landlord as the rental unit was not suitable for the purpose in which it was rented.

The tenants have claimed for the return of a portion of rent for September 2012 (\$360.00) and all of rent for September 2012 (\$900.00), I find that under these circumstance those amount to be reasonable. Therefore, the tenants are granted compensation for their loss in the amount of **\$1,260.00**.

The tenants have claimed \$30.00 for a space heater, which was to keep the unit warm during the month of October, 2012, and I find that amount reasonable. Therefore, the tenants are granted compensation for the space heater in the amount of **\$30.00**.

The tenants have claimed \$500.00 for cleaning the items in the storage locker, however, there was no evidence to support the actual amount claimed or that all the items were required to be cleaned. Therefore, I will allow a nominal amount to have the items that will require cleaning in the amount of **\$100.00**.

The tenants have claimed \$150.00 for the cost of renting a moving truck and related moving expenses. I find that amount reasonable and is support by the estimate filed in evidence. Therefore, I will grant the tenants a nominal amount of for moving costs in the amount of **\$150.00**.

I find that the tenants have established a total monetary claim of **\$1,590.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the tenant an order under section 67 for the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order as described above.

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: November 8, 2012.

Residential Tenancy Branch