



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes

OPR, OPC, OPB, MNR, CNR, MND, MNSD, OLC, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and damages, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- Reimbursement of the filing fee, pursuant to Section 72 of the Act.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- An order to compensate the tenant for the cost of emergency repairs;
- An order to compel the landlord to comply with the Act;
- Reimbursement of the filing fee, pursuant to Section 72 of the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

At the outset of the hearing the tenant advised that they will be vacating the rental unit at the end of January 2013. Accordingly I find that the tenant's request to cancel the 10-Day Notice to End Tenancy for Unpaid Rent and the landlord's request for an Order of Possession are now moot and need not be decided.

Remaining Issues to be decided: Landlord's Application

- Has the Landlord established monetary entitlement to compensation for rent still outstanding?
- Is the landlord entitled to monetary compensation for damages?

Issues to be decided: Tenant's Application

- Should the landlord be ordered to comply with the Act?
- Is the tenant entitled to monetary compensation for the cost of emergency repairs?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in May 2012 with rent set at \$950.00 per month, payable on the 1st day of each month. A security deposit of \$475.00 was paid.

In evidence were; a copy of the tenancy agreement, an application for tenancy, a copy of the 10-Day Notice to End Tenancy for Unpaid Rent, a copy of a One-Month Notice to End Tenancy for Cause, copies of communications, written testimony from both the landlord and the tenant, copies of written receipts for rent paid, copies of invoices, photos and a CD disc.

The parties confirmed receipt of evidence.

The landlord is claiming compensation of \$3,187.33 and the breakdown is as follows:

- \$950.00 for unpaid rent for January 2013
- \$950.00 anticipated rent owed for February 2013
- \$337.33 estimated cost of materials to rebuild the deck demolished by the tenant
- \$500.00 estimated cost of labour to rebuild deck
- \$400.00 to replace flooring in the utility room removed by tenant
- \$50.00 for the cost of the application

The landlord conceded that the tenant was entitled to a credit of \$475.00 for the security deposit and that a reimbursement to the tenant for \$658.57 was justified to replace the hot water tank, taking into account \$474.01 for the purchase of the tank, plus taxes and one hour of labour. The landlord seeks monetary compensation for the remainder of the costs after the above deductions.

The tenant is also making a monetary claim against the landlord. The claim is for \$1,146.61 and the breakdown for the tenant's amended claim is as follows:

- \$105.00 labour for cleanup and the removal of damaged laminate flooring after the flooding
- \$1,041.61 reimbursement for the cost of replacing the water heater
- \$50.00 for the cost of the application

The landlord testified that on December 21, 2012 they received a voicemail message from the tenant stating that there was a problem with the hot water tank and it was leaking onto the laminate floor in the utility room.

The landlord testified that he contacted the tenant later that evening and the tenant advised the landlord that he had already made an arrangement to have the tank turned off and drained by his plumber friend. According to the landlord, the landlord then requested that the tenant contact him the next day with respect to what damage was found and to discuss arrangements to schedule the repairs.

The landlord testified that by the following day, December 22, 2012, the water tank had already been replaced and the tenant was requesting to be reimbursed \$1,041.00, for the cost of materials and 5 hours of labour.

The landlord stated that they did not agree with the amount being charged for the repairs, as they felt it was excessive. The landlord believed that the cost should not have exceeded \$658.57. The landlord stated that the tenant's action deprived the landlord of the opportunity to arrange for the work to be completed by the landlord's own contractor. The landlord also took issue with the fact that the tenant's invoice was not immediately furnished and that the invoice that was finally received was not completed properly.

The tenant argued that the landlord told him he was not available to deal with the emergency and had verbally consented to the tenant "taking care" of the problem. The tenant stated that the amount charged was the genuine cost for a qualified professional to do this job and the invoice reflected this fact. The tenant pointed out that there was also an issue with the electrical breaker that also had to be addressed.

The tenant called a witness from the company that had billed him for the hot-water tank repair. The witness from this company confirmed the amount that was charged was based on the work done and the invoice had been paid in full. The tenant is claiming reimbursement for \$1,041.00 he paid for the hot water heater.

The landlord testified that the tenant had removed a 4-foot by 10-foot portion of the flooring in the room where the water heater had flooded. The landlord stated that the tenant's removal had damaged this flooring to the point where it could not be reinstalled. The landlord testified, because of this, that all of the flooring for the space now needs to be completely replaced at an estimated cost of \$400. The landlord stated that the age of the flooring was approximately 5 years.

The tenant disputed the landlord's claim and felt that he should be compensated \$105.00 for his labour in removing the water-damaged flooring. The tenant pointed out

that the flooring had to be taken up because it was wet and the infrastructure had to be dried out underneath. The tenant referenced photographs that showed wet plywood underlay around the water tank.

The tenant's position is that the failure of the water tank was the sole cause all of the damage to the flooring, not any action perpetrated by the tenant.

The landlord testified that the tenant had also removed a perfectly functional deck from the rental unit without the landlord's permission. The landlord testified that the deck was likely 15 years old. The landlord estimated the replacement cost at \$337.33 for materials and \$500.00 cost for labour

The tenant testified that the deck in question was older than 15 years and was subject to "dry rot". The tenant testified that the stairs to the deck were not secured properly. The tenant alleged that portions of the deck were comprised of bare plywood and part of the original structure had already been removed by the landlord as unsafe. The tenant stated that, when he pointed out that the remaining deck was a safety hazard, the landlord did not object to its removal.

The tenant acknowledged not paying any rent for January 2013 and agreed that this rent is owed, but he took the position that this debt was off-set by funds owed to the tenant by the landlord.

The tenant disagreed with the landlord's claim that the landlord is entitled to rent for February 2013. The tenant pointed out that the landlord gave them a One-Month Notice to vacate effective January 30, 2013 and they are complying with this Notice.

As the tenancy is ending, the tenant is also seeking a refund of their security deposit in the amount of \$475.00.

Analysis:

Rent

With respect to the rent owed in the amount of \$950.00, for the month of January 2013, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due and for this reason, I find that the landlord is entitled to monetary compensation of \$950.00 for January 2013.

In regard to rent being claimed for February 2013, I find that the landlord is not entitled to be compensated for rent or loss of revenue for February 2013. I find that the landlord gave the tenant a Notice terminating the tenancy as of January 30, 2013 and the tenant

is complying with this Notice. The claim for \$950.00 for February rent is therefore dismissed.

Damages

In regard to the other damage claims, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

The burden of proof is on the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement by the tenant.

Section 32 of the Act states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

In regard to the hot water heater, I find that the \$1,041.00 expenditure did not occur due to any contravention of the Act by the tenant, but occurred due to a malfunctioning hot water heater. I find that the landlord's argument that the tenant's prompt action in arranging immediate replacement of the hot water heater had deprived the landlord of the opportunity to take care of the problem himself, is not supported by the evidence. I find that, when the landlord was initially contacted on the evening of December 21, 2012, he could have forbidden the tenant from taking any further action, then immediately called his own plumber with clear instructions to take over the emergency repairs as of the following morning. In the alternative, the landlord could also have chosen to directly contact the company with whom the tenant was already dealing.

In regard to the tenant arranging the emergency shut-off and disconnection of the water heater and then arranging the follow-up service call the for the next day, which included the purchase and replacement of the water heater, I find that this was a genuine emergency repair made on behalf of the landlord to maintain essential services to the tenant. I find that the landlord has not furnished sufficient evidence to prove that this

cost was exorbitant. For this reason, I find that the tenant is entitled to be reimbursed in the amount of \$1,041.00 for the repairs.

With respect to the landlord's claim against the tenant for the ruined flooring, I find it is likely, on a balance of probabilities, that this flooring may have been irreparably damaged by moisture infusion that soaked both the floor and the underlay. I find that the tenant did complete all of the clean-up after the flooding and the removal of the damaged flooring was likely part of this clean-up. I find that this job would normally be the landlord's responsibility to do under section 32 of the Act. However, the tenant did not make any request that the landlord take care of the clean-up and apparently chose to do it himself.

Given the above, I find that that neither party is entitled to be compensated for their labour or materials relating to the removal of the flooring.

In regard to the demolition of the deck, I find that there may have been some verbal communication between these parties on the subject, but they should have discussed what was to be done in a more formal way. I do accept the tenant's testimony that the deck was deficient, but I find that the problem should have been assigned by the tenant to the landlord to allow the landlord the opportunity to either repair the deck, so that it was completely safe, or remove it. Either way, the landlord would have incurred some costs not related to the tenant. I find that the tenant did deprive the landlord of this choice by addressing the problem himself in the manner he felt was appropriate. That being said, I find that it was not sufficiently proven that the landlord suffered the claimed loss due to the actions of the tenant. I find on a balance of probabilities that the deck would have required some attention and cost in the interest of safety even if the tenant did not intervene.

For this reason, I find that the landlord's estimated claim of \$837.33, for the labour and materials to build a new deck, is not supported by the evidence and must be dismissed.

Based on the evidence before me, I find that the landlord is entitled to \$950.00 for rental arrears for January 2013 and the tenant is entitled to total compensation of \$1,516.00 comprised of \$1,041.00 for the cost of the hot water heater repair and \$475.00 for the refund of the tenant's security deposit.

In setting off these two amounts, I find that the balance now owed to the tenant is \$566.00.

I hereby grant a monetary order of \$566.00 in favour of the tenant. This order must be served on the landlord and if necessary may be filed in Small Claims Court and enforced as an order of that court.

The remainder of the landlord's and the tenant's applications are dismissed without leave to reapply. Each party is responsible for the cost of their own application.

Conclusion

Both parties are partially successful in their applications for monetary compensation and a monetary order for the difference is granted to the tenant.

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: January 29, 2013

Residential Tenancy Branch

