



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lions Court Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order for the Landlord to comply with the Act - Section 62;
3. An Order that the Landlord make repairs to the unit – Section 65;
4. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the amounts claimed?

Is the Tenant entitled to orders that the Landlord comply with the Act and make repairs to the unit?

Is the Tenant entitled to an order to reduce rent?

Is the Tenant entitled to recover the filing fee?

Background and Evidence

The tenancy started on November 1, 2012. Rent of \$1,450.00 is payable monthly.

The Tenants state that since the date of the application the Landlord has made repairs to some of the items included in the claim. During the hearing the Parties agree that the Landlord will replace the fridge by March 20, 2013 and will address the following remaining items as follows by March 7, 2013:

- Missing fuse to be inspected and repaired or replaced;
- Attach cover over hole in living wall;
- Affix cover plate currently held by tape;
- Inspect and repair loose electrical in bathroom;
- Inspect and repair drainage in bathroom;
- Apply last coats to flooring; and
- Provide a second key to the garage.

The Tenants state that the heat in their unit was not working at move-in and that the Landlord repaired this on November 8, 2012 but that the heat then could not be controlled. The Tenants state that despite informing the Landlord of the continuing problem, the Landlord did not attend the unit or repair the problem until January 16, 2013. The Parties agree that when the heater control stopped again the Landlord repaired it by replacing the valve within two days. The Tenants state that for a period of 2 ½ months, the Tenants had to open windows to let the heat out, sometimes during the middle of the night and that as the windows were open the Tenants were subjected to the outside noise. The Tenants claim \$500.00 for their inconvenience and loss of comfort and enjoyment of the unit. The Tenants state that this amount is based on what they would expect would be a reduced rental amount if they had to live with this heat issue.

The Landlord states that he attending the unit sometime in December and that as he was not able to repair the valve completely that a replacement part had to be ordered and that as soon as that part was obtained the heater was fixed. The Landlord states further that the heater was able to be repaired in December 2012 to the extent that it was no longer emitting high heat. The Landlord states that only a small amount of heat

came out of the heater and that the Tenants are not entitled to compensation as the Landlord acted reasonably and in a timely manner to repair the heater and that the Tenants did not lose any heat and were able to live in the unit.

The Tenants state that as the Landlord did not make repairs to the remaining times in a timely manner that the Tenants were left to live in unsightly unit. The Tenants state that a number of the items that were not repaired were noted at move-in and that the amount of compensation being claimed is consistent with the quality expected of the unit for the rent being paid.

Analysis

Section 63 of the Act is set out as follows:

- (1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or order.

Given the agreement of the Parties, I find that the Tenants are entitled to an order that the Landlord make the repairs as set out above by March 7, 2013 and that the Landlord replace the fridge by March 20, 2013. As the repairs have been agreed to at this hearing, I find that the Tenants are not entitled to a reduction in rent for ongoing failure to repair. Should the Landlord fail to carry out the agreement for repairs and replacement however, the Tenants are at liberty to make further application for dispute resolution.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party

claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Landlord argues that the repairs to the heating were done in a timely and reasonable manner, this is based on an acceptance that the Landlord did attend the unit to make partial repairs in December 2012 and then had to wait for the part to be ordered. As the Landlord was not sure of the date when he attended the unit in December 2012, has provided no evidence to support a delay due to ordering a part and considering the Tenants evidence of no attendance by the Landlord in December 2012, I find that the Tenants have substantiated on a balance of probabilities that the Landlord failed to repair the heater during the period November 8 to January 16, 2013 and that the amount of time taken was not reasonable. Considering however that the overheating was alleviated by opening windows, I find that the Tenants loss is limited to the noise entering from outside the unit from the open windows and the discomfort of waking periodically overnight. I find therefore that the Tenants are entitled to a nominal amount of **\$200.00** for this inconvenience and discomfort.

Given the various times of delay in making the remaining repairs and noting that these repairs are in relation primarily to unsightliness and inconvenience, but accepting that the Landlord did not attend to these repairs for at least a period of one month, I find that the Tenants have substantiated an entitlement to a nominal amount of **\$100.00** for this unsightliness and inconvenience.

As the Tenant has been successful with its application, I find that the Tenants are entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$350.00**. I order the Tenants to reduce April 2013 rent by this amount.

Conclusion

I order the Landlord will make repairs as set out above.

I order the Tenants to reduce April 2013 rent by \$350.00.

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: March 04, 2013

Residential Tenancy Branch

