



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELECTRA ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, PSF

Introduction

This hearing was convened in response to an application seeking the following Orders:

1. That the landlord be compelled to make emergency repairs for health or safety reason; and
2. That the landlord be compelled to provide services or facilities required by law.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Should the landlord be compelled to make emergency repairs and provide services or facilities required by law?

Background and Evidence

A written Tenancy Agreement was submitted into evidence showing that this tenancy was to commence on January 15, 2013 for a fixed term ending June 15, 2012. On June 15, 2012 the tenancy will end and the tenants must move out of the rental unit. Rent was fixed at \$890.00 per month and the tenants paid a security deposit of \$445.00 on January 15, 2013.

The female tenant testified that they did not actually move into the rental unit until January 18, 2013 but she did inspect the premises with MP on January 16, 2013 and noted there was sediment in the toilet. The tenant says that she mentioned the issue to the property manager, MP, who advised that there had been a water problem and it had now been fixed. The tenant says she asked if the water was safe to drink and MP assured her it was safe.

The tenant testified that on January 21, 2013, she noticed film on top of the water and within 2 days that film turned into a dark grey, almost black. The tenant says she sent texts to MP about the problem on January 20, 31, February 1 and 5 and then she began sending emails to MP. The tenant says things "...came to a head..." on February 15, and MP responded that it would be fixed. MP told the tenants that new filters had been ordered and would be arriving shortly and the water issues should be repaired in two days. The female tenant says she advised the landlord that she no longer wanted to live in these conditions and she either wanted something done or she wanted out of the lease. The landlord delivered an agreement to end the tenancy that she signed. The tenant says she signed without understanding its terms. The tenant says she wanted all of her rent returned as well as her security deposit but the agreement only provided for the return of only half a months' rent and the deposit. The male tenant did not sign the agreement. In any event, in a hearing held in February 2012 at a previous hearing held in February 20, 2013 which was held in response to the landlord's application for an early end of tenancy, the Arbitrator found, with respect to the Agreement to end the tenancy that:

... the mutual agreement in evidence was not a clear document terminating the tenancy. I find that it contained numerous financial pre-conditions and specifically stated that both co-tenant's signatures were required to be valid.

The landlord's application for an Order of Possession in that hearing was dismissed and the tenancy continued.

The tenant agrees that the landlord has been supplying bottled water for cooking and drinking but says this is not sufficient for bathing or doing dishes. The tenant agrees that the landlord has also provided passes for them to attend the local recreation center to bathe. The tenants agree that they have not spent any monies on repairs but note that the recreation center is 13 kilometers away and they are using up fuel to drive back and forth.

The landlord submits that he is doing everything he can to rectify this situation. The landlord submitted a log of steps taken to rectify the situation beginning on December 23, 2012. The landlord says he has been advised that the water is running clear except for a very small amount of sediment. The landlord says even so he is trying to ensure there is no sediment at all and has taken numerous steps to flush the system, install new filters and he is now about to install an entirely new system. In the meantime, the landlord says the water specialists have assured him that the water is fine for bathing and he continues to supply two 18.9 liter jugs of water every other day to the tenants for

drinking and cooking as well as supplying punch cards for showers at the recreation center. The landlord says the water system is well water and he originally sought to have a new well installed but he was advised that a new well could not be dug in winter. Further, that a new well would not guarantee success for the under water system.

The landlord says he ordered a new filtration system from California which was installed and became clogged from settlement contained in the winter rain water coming up through the ground. The landlord consulted with the manufacturer and new filters were installed. This resulted in the water running clear but there was no water pressure. The landlord says he engaged the services of a water specialist who was in touch with the landlord's maintenance person. After several flushes of the system and water filter replacements the water specialist advised on February 12, 2013 that the water was running clear and the system is working. The landlord says that when he advised the tenants that the system was fixed the tenants disagreed.

On February 13, 2013 the landlord's maintenance person went to the rental unit, drained the hot water tank and flushed it. He also checked and found the water to be running clear. The tenants were advised that after the flushing of the tank they should run the water until it came clear.

The landlord says that while the water is sufficient for now the landlord wishes the water to contain no sediment at all. The water specialist recommended having water pumped from the lake through an antibacterial system as others in the area do. The landlord says he has ordered the system and it has arrived but the installers are unable to run the pipe into the lake until the end of March as a result of treaty obligations that dictate that the fish in the lake not be disturbed this time of year. The landlord says he booked an appointment for the installation on March 23 and it could be fixed within 2 days but, because of the way contractors work, the landlord thinks it is more realistic to believe it will be fixed sometime between March 23 and 31.

In the meantime, the landlord says that he and his caretaker are providing the tenants with two 18.9 liter jugs of water for drinking and cooking every other day and the water running in the rental unit is fine for showers. Even so, the landlord says he is also supplying passes so that the tenants can shower at the local recreation center. The landlord says they have tried to end this tenancy for cause as the tenants have been causing problems on the rental property but they were unsuccessful in their previous application for an early end of tenancy and despite the tenants' complaints they do not seem to wish to leave. The landlord says they also tried to negotiate an end of tenancy with these tenants because the other tenants on the property are being disturbed by

them however, while the female tenant agreed with the terms of the agreement to end the tenancy, the male tenant did not.

The female tenant responded that she remains prepared to end the tenancy but is requesting the return of one month's rent of \$890.00 plus \$100.00 for each of the two tenants in compensation for loss for a total of \$1,090.00 plus the return of \$445.00 for a total payment by the landlord to the tenants of \$1,535.00.

As there was no claim made for compensation for damage or loss. The landlord was asked if he would agree to the tenants' amending their application at this time to make the claim set out above.

The landlord declined. The landlord says there is nothing wrong with the water for showering and that he is doing everything possible to give the tenants sufficient water for drinking and cooking until the new water system is installed on March 23. The landlord says the parties have a fixed term tenancy ending in June and he will hold the tenants to that fixed term as it is difficult to find new tenants this time of year.

The male tenant testified that he wanted to put this hearing "on hold" while he gathered all his materials from his physicians to make his claim for compensation. The male tenant says that he has been made ill by the contaminated water.

The landlord submitted that the tenants have not made any claim for compensation. The landlord says he has been held to the strict legal requirements in the previous hearing and he should not be compelled to allow any lee-way to the tenants now. The landlord says he does not consent to this matter being put "on hold" so the tenants can add to their claims.

The tenants say they don't know what to do as they cannot live in the rental unit in its current condition. The female tenant says they have to move to a hotel or vacate the premises and she will accept the \$1,535.00 to do so.

Once again the landlord declined.

Analysis

With respect to the issue of compensation, the claim before me is a claim brought by the tenants seeking to have the landlord take action: To make emergency repairs and provide services or facilities. The Application does not contain a request for financial compensation. It appears that the "cost of emergency" repairs box was ticked on the

Application but this tick has been crossed off and initialled by the female tenant. Further, in this regard the female tenant testified that it was her intent to add this claim not to remove it. However, in addition to this discrepancy, no actual amount was noted as being sought in the application and at the hearing of this matter the tenants agreed they did not spend any monies on emergency repairs. The landlord is entitled to know the full claim being made against him in order to allow him to make full answer in defense. I find that he has been served with a claim showing that the tenants were seeking to have him: Make emergency repairs and provide services or facilities and these are the only claims that I will deal with.

With respect to the male tenant's request to put this matter "on hold" until he can file further material to support a claim for compensation, again, no such claim is before me and the landlord has not been provided with Notice of such a claim. The hearing has been held and the parties are entitled to a decision with respect to the claims made.

I accept the landlord's evidence and find that he is taking steps to rectify the problems with the water system and a final resolution is imminent. Further that he is taking steps to minimize the situation by providing bottled drinking/cooking water to the tenants and passes to the local recreation center for bathing although the landlord has testified that the water supplied to the rental unit is sufficient for bathing. In any event, as the landlord has stated that the new water system could be installed by March 31, 2013 I will hold the landlord to that testimony and order that the landlord ensure completion of the installation by that date.

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

