



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC, OLC, ERP, RP

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking orders to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; her advocates; and her witness.

The tenant's witness testified she served the landlord with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Act* by registered mail on June 28, 2013 in accordance with Section 89 to the only address provided by the landlord. However, the witness confirmed, by checking Canada Post tracking information that it was being returned as unclaimed.

As a result the witness found the landlord's corporate office address and served all documents personally to the landlord's representative MH who signed a handwritten note indicated that she had received the documents on August 2, 2013 at 10:35 a.m. on behalf of the landlord's agent RK, respondent. The tenant provided copies of this note.

Based on the testimony and evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to orders to have the landlord make repairs and emergency repairs; a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 65, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 19, 2010 for a month to month tenancy beginning on July 1, 2010 for a current monthly rent of \$850.00 due on the 1st of each month;
- Copies of correspondence between the tenant and/or her advocates and the landlord regarding the tenant's request for compensation due to the loss of books from mould and the tenant's complaints about heating in the rental unit; and
- Copies of electrical utility bills for the period from February 2011 to July 22, 2013.

The tenant submits that she has been requesting her landlord to fix a heating problem from the beginning of the tenancy and that because the landlord has not fixed the heating problems, her medical conditions have been exacerbated. The problems in the rental unit include leaks and lack of insulation in exterior walls and heat being delivered to the rental unit,

The tenant submits that due to her age and medical conditions she has suffered greatly as result of this lack of heat and has had to heat her rental unit using electric heaters. Electricity is not included in her tenancy and because she uses these electric heaters her electrical costs have increased substantially. The tenant seeks compensation in the amount of \$900.00 for the additional electrical costs representing \$30.00 a month for 2 ½ years of the tenancy.

The tenant also seeks an order to have the landlord stop exterior air infiltration in the rental unit and to provide heat in accordance with any local municipal requirements or within a comfortable; agreed upon temperature range.

The tenant submits that mould was found in her rental unit and that the landlord has removed the source for part of the mould problem. The tenant submits that as a result of the mould she lost several books that became unsalvageable. The tenant indicates that she approximately 50 books that had for the most part been gifts; some directly from the authors. The tenant estimates the replacement cost at \$500.00.

The tenant submits that there continues to be mould in the unit that the landlord has not yet addressed and she seeks an order to have the landlord have the mould in the bedroom windows eradicated.

The tenant seeks additional compensation for the impact the landlord's failure to eradicate all mould and repair the heating system has had on her health and the loss of quiet enjoyment of the rental unit. The tenant seeks an amount of \$3,600.00.

Analysis

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

From the undisputed testimony of the tenant I find the tenant has been seeking repairs to the heating system for the majority of the duration of the tenancy and that the landlord has taken no steps to correct the problems. I accept the landlord has acknowledged there is a heating problem in the rental unit as they have offered to provide the tenant with an electric heater.

While I accept that an electric heater will reduce the impact on the ambient temperature in the rental unit I find that by having to use an electric heater the tenant has to pay for heat through her hydro bill when heat supposed to be provided by the landlord, according to the tenancy agreement.

For these reasons, I find the tenant is entitled to compensation from the landlord for additional hydro costs incurred as a result of using an electric heater. I find the compensation sought by the tenant in the amount of \$900.00 is based on a reasonable estimate of the additional costs and is supported by the tenant's hydro bills submitted.

As the landlord is failing to provide heat as is required under the tenancy agreement, I order that the landlord repair any sources of cold air intrusion into the rental unit and ensure that heat provided to the rental unit by the central heating system in the residential property meets local municipal requirements or a mutually agreed upon temperature range.

Based on the tenant's undisputed testimony and evidence, I accept that the rental unit has had a mould problem that the landlord has rectified but that there are still some problem mould areas in the rental unit. I find the tenant has established that as a result of the mould the tenant had suffered the loss of 50 books valued at approximately \$500.00. I find this to be reasonable compensation for this loss. I also order the landlord to hire a mould abatement specialist to ensure all mould is confirmed to be eradicated from the rental unit as soon as possible.

I also order that landlord pay the tenant's entire hydro utility bills until such time as the landlord completes the above noted repairs and obtains an order from a Residential Tenancy Branch Arbitrator confirming the work is completed and the landlord can stop paying the tenant's hydro utility charges in accordance with the tenancy agreement.

As to the tenant's claim for \$3,600.00 for the loss of quiet enjoyment as a result of the failure on the part of the landlord to address the repairs for heating and mould I find the tenant has failed to provide sufficient evidence establish that she has suffered a loss that could be valued at \$3,600.00.

However, Residential Tenancy Policy Guideline #16 stipulates that an arbitrator may grant aggravated damages that are meant as an augmentation of an award of compensatory damages for non-pecuniary losses. Such an award may be granted for losses of physical inconvenience and discomfort. Aggravated damages are intended to

compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour.

I find that due to the length of time the landlord has failed to resolve the heating and mould issues the tenant is entitled to damages in the amount of \$500.00 for losses of discomfort and physical inconvenience.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,900.00** comprised of \$900.00 hydro overages; \$500.00 for compensation for books lost to mould and \$500.00 for loss of quiet enjoyment/aggravated damages.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 27, 2013

Residential Tenancy Branch