



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for the cost of emergency repairs; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agree that this month to month tenancy started on January 07, 2009. This was a verbal agreement between the parties for the tenant to rent this lower unit at a monthly rent of \$600.00. Rent is due on the first day of each month.

The tenant testifies that the landlord failed to make emergency repairs to the bathroom, the plumbing leaked, there was a one foot hole in the floor, the fumes from the septic came into the bathroom and the walls were rotting. The tenant testifies that she was without the use of her shower for six weeks. The tenant testifies that she informed the landlord of these issues and as the landlord did not make the repairs the tenant had the plumbing work done by a plumber and did some of the other repair work herself. The tenant testifies that she gave the landlord the receipt for this work of \$1,200.00. The tenant seeks \$500.00 for her labour in doing some of the work to renovate the bathroom. The tenant testifies she ripped out the mouldy framework, put up new framework and walls and did other remedial work. The landlord allowed the tenant to deduct two months' rent for this cost in September and October, 2012. There was a further cost for plumbing of \$298.00 where the plumber had to connect the drain pipes as they were leaking and repair the hole in the bathroom floor. The tenant testifies she has given this receipt to the landlord but the landlord has not paid it. The tenant has provided photographs showing the condition of the bathroom prior to this work taking place. The tenant has provided a copy of the receipt for \$298.00 in evidence.

The landlord testifies that he agrees the tenant gave him the receipts but testifies that the tenant had three and a half months rent unpaid. The landlord later changes his testimony and agrees the tenant was allowed to deduct two months' rent for the cost of the repairs. The landlord disputes that the bathroom needed to be renovated. The landlord testifies that the bathroom was not in a top grade condition however the tenants low rent reflected this. The landlord testifies that he told the tenant to get a plumber in for an estimate but the tenant went ahead and did the work. The landlord agrees that the tenant is entitled to the \$298.00.

The tenant testifies that the dryer broke down in 2011 when the heat element switch was broken. The tenant notified the landlord however as the landlord did not get the dryer repaired and instead told the tenant to dry her clothes on the line, the tenant had the dryer repaired herself and seeks to recover the cost for this repair of \$96.01. The tenant has provided a receipt in evidence. The tenant testifies that the dryer broke down again in 2011 with a faulty thermo fuse. The tenant again notified the landlord however no repair was made so the tenant paid \$121.48 to repair the dryer and a copy of the receipt has been provided in evidence.

The tenant testifies that the stove was old, the oven would not heat up and only one element worked but even that would not stay on a constant heat setting. The tenant testifies that when the dryer repairman came to fix the dryer the tenant asked him to look at the stove. The tenant testifies that the repairman said the stove was not worth repairing as stove parts are very expensive. The tenant testifies that she informed the landlord and as the landlord did not repair or replace the stove the tenant purchased a new one from Home Depot for \$837.74. The tenant seeks to recover this cost from the landlord and has provided a copy of the receipt in evidence.

The tenant testifies that there is one heat vent in the living room with electric baseboard heaters and a fire place. The tenant testifies that the first winter she lived in the unit she used the fireplace but it created smoke and was blocked. The tenant used the electric baseboard heater but the landlord complained that the heating bills were too high. The tenant testifies that she was told by the tenants upstairs that the chimney had not been cleaned for many years. The tenant testifies she then asked the landlord when the chimney had last been cleaned and the landlord told the tenant to go ahead and get it cleaned she the tenant could use the fireplace. The tenant testifies that the unit came with the fireplace and the landlord is therefore responsible to maintain it. The tenant seeks to recover the cost for the chimney cleaning of \$218.40 and has provided a copy of the invoice in evidence.

The landlord disputes the tenants claims the landlord testifies that when the tenant told the landlord that the dryer was not working he did tell the tenant to get it fixed and that cost came off the two months' rent the tenant was reimbursed for in 2012. The landlord changes his testimony and now states he did not get a receipt for \$1,200.00 from the tenant. The landlord testifies that the two months' rent the tenant got was supposed to cover all the work in the bathroom, the dryer, the stove and the tenant's labour costs.

The landlord testifies that the old stove was not that bad. The tenant had complained that she didn't like the colour of the stove and was told to get an estimate for a stove; however the tenant just went out and bought a new stove without the landlord's permission and now the tenant wants the landlord to pay for it.

The landlord testifies that the tenant did inform the landlord that the chimney needed cleaning. The landlord testifies that the unit did not come with a working fireplace so the landlord told the tenant she could get the chimney cleaned if she wanted to use the fireplace but the tenant would have to pay for it. The landlord agrees that he has owned the property for 20 years and the chimney has never been cleaned as the last tenants hardly used the fireplace.

The tenant testifies that the landlord has not protected the tenant's right to quiet enjoyment of her unit. The tenant testifies that the tenants upstairs cause constant disturbances. They play loud music; have vandalised the tenant's vehicle; they have three Pit Bull dogs which are unleashed one of whom, chased the tenants cat into the tenants unit knocking over the tenants furniture; they have thrown cigarette butts into the tenants awning causing eight burn holes; the tenant found a switch blade in the yard and then discovered that her 50 foot hose had been slashed; glass has been thrown at the tenant and metal dog bowl hit the tenant on the head; glass has also been smashed around the tenant's car; when the tenant had her car and went out to it the tenants upstairs would surround the tenant intimidating her. The tenant testifies that this has been an ongoing problem for four years and the tenant has asked the landlord to do something about this problem but the landlord only said he would serve them with an

eviction notice if the tenant agreed to withdraw this application. The tenant testifies that on the advice of the police the tenant did not withdraw the application. The tenant testifies that the police have been called out dozens of times in the last few years concerning the upper tenants' actions towards the tenant and some of the police files have been provide in evidence which document some of the issues described by the tenant.

The landlord testifies that that both sets of tenants cause problems. The tenant has been complaining for four years but cannot prove all the allegations against the upper tenants. The landlord testifies that the police came to speak to him about the incidents and said that the tenants' don't get along. The landlord states that if this tenant was nicer to the upper tenants then they would be nicer to her.

The tenant seeks compensation from the landlord for the loss of quiet enjoyment and seeks an Order for the landlord to comply with the *Act* with regard to protecting the tenant's right to quiet enjoyment.

Analysis

With regard to the tenants claim for compensation for an emergency repair; Section 33(1) of the *Act* states:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,

- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

I have considered the evidence and testimony before me and find I prefer the tenant's evidence that the bathroom was in a poor state of repair that required emergency work done to repair pipes and other fixtures. I further find that the room as a whole was in a poor condition which resulted in the tenant having to undertake remedial work after the plumbing work was done. The landlord has contradicted his own testimony concerning the reimbursement to the tenant. The landlord at first stated that the tenant had three and a half's month's rent free and then stated the tenant had two months' rent free. I therefore find the landlords testimony to lack creditability. The landlord has agreed that tenant can be reimbursed for the amount of **\$298.00** and I therefore award this amount to the tenant. With regard to the tenants claim for a further \$500.00 for her labour costs; I have insufficient evidence from the tenant concerning how many hours she worked on the bathroom or that this amount was not part of the \$1,200.00 invoice given to the landlord. Therefore this section of the tenants claim for labour costs is dismissed.

With regard to the tenants claim to recover the costs to repair the dryer; I find the landlord agreed the tenant could get the dryer repaired. The landlord must maintain the appliances under his responsibility as a landlord. The landlord testifies that he reimbursed the tenant in the two months' rent for these repairs. However if the original bathroom repair cost \$1,200.00 and rent is \$600.00 then there would be no further amounts from the rent reimbursement. I therefore find the tenants evidence more credible and award the tenant the amount of **\$217.58**.

With regard to the tenants claim of \$837.74 for the replacement stove; the landlord argues that he asked the tenant to get an estimate for a stove but the tenant just went and bought a new stove. The tenant argues that the landlord would not repair or replace the stove so she had to buy a new one. Having considered both arguments I find the tenant has provided insufficient evidence that the stove was in a condition that was beyond repair. If the landlord had failed to repair the stove or after having an estimate done for repair found it was not worth repairing then the landlord would then have had the option of replacing the stove with a similar model. A tenant does not have the right to replace the stove herself and then expect to be reimbursed by the landlord. If the landlord failed to provide a working stove then the tenant had the option of applying for Dispute Resolution asking for a rent reduction for repairs or loss of a facility and for the landlord to comply with the *Act* by providing a working stove. This section of the tenants claim is therefore dismissed.

With regard to the tenants claim for chimney cleaning; when a fireplace is included in a unit then a landlord must ensure the fireplace works if the tenant uses it. If the fireplace is not to be used then the landlord must put that in writing at the start of the tenancy so the tenant is aware that it is not included in the rent. As the landlord failed to maintain the chimney by having it regularly cleaned then I find in favour of the tenants claim for **\$218.40** to get the chimney cleaned.

With regard to the tenants claim for a loss of quiet enjoyment; I refer the parties to the Residential Tenancy Policy Guidelines # 6 which provides clarification and guidance on the covenant of quiet enjoyment. The guideline states, in part, that the *Residential Tenancy Act* (the Legislation) establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

The tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

I have considered the evidence before me and find the tenant has sufficient evidence to show that the tenant has suffered frequent and ongoing interference, harassment and intimidation at the hands of one or more of the upper tenants. The landlord agrees that he was aware of the conflict between the tenant and the many police visits to the property after being called out by the tenant. The landlord agrees that he offered to serve the upper tenants with a Notice to End Tenancy if the tenant withdrew her application. I am therefore satisfied that the tenant has sufficient proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In determining the amount by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation and the length of time over which the situation has existed. I therefore find the tenant is entitled to some compensation from the landlord for the landlord's failure to protect the tenant's right to quiet enjoyment and I therefore award the tenant an amount of **\$500.00**.

I ORDER the landlord to ensure the landlord complies with section 32 of the *Act* as follows:

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I further Order the landlord to comply with section 28 of the *Act* as follows:

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.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,233.98**. The order must be served on the respondent and is enforceable through the Provincial Court 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 23, 2013

Residential Tenancy Branch

