



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, PSF, RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords provide services or facilities required by law; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and both landlords attended the hearing, however the tenant and only one of the landlords gave affirmed testimony. The landlords also called one witness who gave affirmed testimony. The tenant provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the landlords. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised. However, after the witness had testified and had been excused, the tenant raised the issue that the Residential Tenancy Branch Rules of Procedure require parties to notify each other of witnesses that they intend to call. I find that if the party took issue with it, the party ought to have raised it prior to hearing the testimony and the witness being excused. Therefore, I consider the testimony of the witness.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for inconvenience, pain and suffering, and humiliation?

- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to not enter the rental unit except in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlords should make emergency repairs for health or safety reasons?
- Has the tenant established that the landlords should be ordered to provide services or facilities required by law?
- Should the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided, and more specifically for parking?

Background and Evidence

The tenant testified that this month-to-month tenancy began on June 15, 2011 but the tenant didn't move into the rental unit until June 17, 2011, and the tenant still resides in the rental unit. Rent in the amount of \$595.00 per month is payable on the last day of each month and there are no rental arrears. A copy of 2 pages of a 4 page tenancy agreement has been provided, and the tenant testified that those are the only pages received from the landlord. The landlord who made the tenancy agreement sold the rental unit and other 23 units to the current landlords who inherited the tenants in the building upon purchasing it. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$297.50 which is still held in trust by the current landlord.

The tenant further testified that the rental unit was without hot water from February 1, 2014 until March 6, 2014. A blue crane hit the wires resulting in a power outage. The tenant has been required to boil water or go to another person's house to shower, and the boiling of water has caused the tenant's power bill to increase. The tenant has provided a power bill covering the period of December 10, 2013 to January 9, 2014 in the amount of \$21.31 and another covering the period of January 10 to February 7, 2014 in the amount of \$93.48. The earlier bill shows that the usage is \$50.94 and the payment amount is \$21.31, and the later bill shows that the usage is \$51.67 and the payment is \$93.48. Both bills state: "The Equal Payment Plan shows the amount due at the bottom of this bill. Any details shown directly below are for your information only." The tenant stated that the increase must be as a result of boiling water.

The tenant also testified that after serving the landlord with this application for dispute resolution, the hot water suddenly was turned back on and 2 days later the landlord served the tenant with a notice to end tenancy. That matter is scheduled to be heard at

a later date. Prior to that, the tenant ran hot water into the tub with the plug in and ran out of hot water by the time the tub was 8 inches full. The tenant does not add cold water until all the hot water has been used.

On March 8, 2014 the landlord entered the tenant's rental unit while the tenant was in bed. The tenant found the door to the rental unit open and a notice to end tenancy on the floor. The tenant called the police and offered a police file number and constable's name as evidence.

The tenant further testified that sewage has been backing up in the bathtub, bathroom sink and kitchen sink. On March 9, 2014 the pipes outside blew up and the laundry room in the building flooded. The landlord had a maintenance person or plumber snake the bathroom sink, so it's now okay, but the tub and kitchen sinks still back-up. The landlord gave the tenant 2 kinds of Draino to use, one of which was industrial strength, but neither the landlord nor the landlord's maintenance person applied it; they left the tenant to use it and immediately vacated the rental unit because they don't want to talk to the tenant. Neither of the Draino products worked, the tenant testified that they need to be snaked by a professional.

The tenant further testified that the tenant has asked for a parking spot big enough to park a van in. The tenant has to pay someone to drive due to a back injury, and another tenant has 2 spots. The tenant claims that either the landlord should reduce rent or assign a parking spot big enough for the van.

The tenant asks for a monetary order in the amount of \$3,570.00, being 6 months' rent for aggravated damages for physical pain, suffering because of the back injuries, inconvenience, loss of quiet enjoyment, humiliation for having to bathe at other people's home, as well as the increased electrical costs. The tenant also asks for an order that the landlord comply with the *Act* by not entering the tenant's rental unit unless invited or the landlord gives proper notice, and for an order that the landlord make repairs by having a professional snake the bathtub and kitchen sink to ensure no drain back-ups.

The tenant testified that the landlord has told the tenant not to call or contact him again, and the tenant admits to losing her temper on one occasion with the landlord; the tenant had cleared her schedule for workers who never showed up.

The landlord agrees that he took over the tenancy from the previous owner.

The landlord also agrees that a crane hit the wires and when the hydro came back on the control board for the hot water tank that services all 24 units in the building burned

out. The incident happened on a Saturday and the landlord had difficulty getting the proper parts, but the hot water was back on by the following Tuesday. Then the landlord's maintenance person went to the rental unit after the tenant complained that there was still no hot water and the maintenance person ran hot water which was working fine. The landlord then checked the laundry room and other units all of which had hot water. The landlord stated that the hot water may have been used up, and as a result of that assumption, the landlord turned up the temperature on the hot water tank about 2 weeks ago. The landlord denies that the tenant was without hot water for over a month. Also, the tenant has been very rude to the landlord and the landlord's wife and made the landlord's wife cry. The landlord does not wish to communicate directly with the tenant.

The landlord further testified that the tenant made a claim last summer that the rental unit had bed bugs. The landlord hired a professional at some expense to the landlord and no evidence of bed bugs was found.

With respect to the drains in the rental unit, the landlord testified that the maintenance person who attended the rental unit has worked for the landlord for years, and he called a professional plumbing company, who snaked the toilet or bathroom sink with a 100 foot snake and advised that they all drain into the same line.

The landlord also testified that the laundry room flooding issue didn't affect the tenant, and the landlord believes it was a plugged drain. It was repaired and didn't affect this rental unit.

The landlord does not recall any request by the tenant for a specific parking spot.

The landlord's witness testified that he is a maintenance person employed by the landlord and that he attended the rental unit on February 5, 2014 with the plumber. The kitchen sink was draining fine but the sink in the bathroom was slow. The plumber ran a snake through the bathroom sink and cleaned it out. The bathtub was good.

The witness also testified that the landlord's wife had called on Sunday, March 2, 2014 indicating that the landlord was out of town and the apartment building had no hot water. The hot water board was repaired by the following Tuesday. The witness stated that every time he went to the rental unit, the water was too hot to hold his hand under. The witness was there on February 25, 2014, found the water really hot, and found no back-up in the drains.

Analysis

Firstly, I make no findings of fact or law with respect to the notice to end tenancy issued by the landlord. The parties agree that matter is set for hearing at a later date.

With respect to the tenant's claim for a monetary order, in order to be successful with such a claim the onus is on the tenant to establish the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate, or reduce such damage or loss.

In this case, the tenant has claimed the equivalent of 6 months' rent for increased hydro, pain and suffering, and inconvenience. With respect to the increased hydro, I have examined the power bills provided by the tenant and I find that the usage is very similar from one month to the next. There is nothing on the bills nor have I heard any testimony from the tenant about how the increase happened. The bills specify that the amounts are on an Equal Payment Plan, and I note that the earlier bill was \$50.94 but the payment amount is only \$21.31 on that Equal Payment Plan and the total consumption for the billing period (31 days) is 601 kW.h. The next bill is \$51.67 but the payment amount is \$93.48 and the consumption for that billing period (29 days) is 615 kW.h. I find that the tenant has failed to establish that the increase is due to the landlords' failure to comply with the *Act* or the tenancy agreement.

With respect to the tenant's claim for inconvenience, pain and suffering, and humiliation the landlord agreed during testimony that the tenant was without hot water from February 2 to February 4, 2014. The tenant stated that it was from February 1 till March 6, 2014. I accept the undisputed testimony of the tenant that the tenant had cleared her schedule for workers who never showed up. The tenant has applied for a monetary order in an amount that is equivalent of 6 months' rent, and I find that excessive. The tenant had exclusive possession of and enjoyment of the rental unit, and I find that the tenant has failed to establish that the rental unit had no hot water for that period of time, or that workers failing to show up amounted to a severe inconvenience. I am satisfied, however, that the drainage problem existed which, along with no hot water for 3 days has devalued the tenancy. I find that the sewage problem existed from March 9 to 17, 2014 and no hot water from February 2 to 4, 2014 and the tenant has established a monetary claim as against the landlords for one half of a month's rent for the inconvenience, inclusive of pain, suffering and humiliation.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, I have conflicting testimony from the parties about whether or not the landlord entered the rental unit without the tenant's invitation and without giving notice. A landlord must only enter a rental unit as provided for in the *Act*, and I order the landlord to comply, as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) The purpose for entering which must be reasonable;
 - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant testified that the landlord entered the rental unit contrary to the *Act* when the notice to end tenancy was served. The tenant offered a police file number to substantiate that the police were called, and the landlord did not provide evidence to dispute that testimony, and therefore, I find that the landlord should be ordered to comply with Section 29 of the *Residential Tenancy Act*, and I so order.

With respect to the tenant's application for an order that the landlords make emergency repairs for health or safety reasons, the *Act* describes emergency repairs, and damaged or blocked water or sewer pipes fall within that definition. The tenant states that the kitchen sink and bathtub still back-up, and the landlord and landlord's witness testified that they were checked and are fine. However, the parties agree that the landlord does not want to speak with the tenant, and the tenant admitted losing her temper on one occasion. I order the landlord to retain the services of a plumber to snake the kitchen sink and bathtub to ensure no drainage problems will persist. I further order the landlord to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept.

With respect to the tenant's application for an order that the landlord provide services or facilities required by law, the tenant testified that after serving the landlord with this

application for dispute resolution, the hot water suddenly was turned back on and I dismiss that portion of the tenant's application.

With respect to the tenant's claim for a reduction in rent for repairs, services or facilities agreed upon but not provided, I have examined the 2 pages of the tenancy agreement provided. Parking is not included in the rent on that agreement, and I find that the tenant has failed to establish that a parking spot was promised. The tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$297.50 and I order that the tenant be permitted to reduce a future month's rent by that amount or otherwise recover the amount.

I hereby order the landlords to comply with Section 29 of the *Residential Tenancy Act* as set out in the Analysis above.

I order the landlord to retain the services of a plumber to snake the kitchen sink and bathtub to ensure no drainage problems will persist. I further order the landlords to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept.

The tenant's application for an order that the landlord provide services or facilities required by law is hereby dismissed.

The tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, with respect to parking, is hereby dismissed.

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 28, 2014

Residential Tenancy Branch

