



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damages or the loss in value of her tenancy under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that the tenant handed her a copy of her dispute resolution hearing package on February 5, 2014. I am satisfied that the landlord was served with the tenant's hearing package in accordance with the *Act*. As both parties confirmed that they have received copies of one another's written evidence, I am also satisfied that both parties have served their evidence to one another.

At the commencement of the hearing, the tenant confirmed that the landlord has undertaken some steps to conduct the repairs that she was seeking in her application. For example, the tenant confirmed that a pest control technician retained by the landlord visited the rental property two days before this hearing and made a series of recommendations that the landlord has agreed to implement. The tenant also gave undisputed testimony that the parties had also agreed to a weekly rate of compensation (i.e., \$40.00 per week) for weeks when the tenant has been without the laundry services that were to be included in her monthly rent as a provision of their tenancy agreement.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the loss of services and facilities that were to have formed part of her tenancy and have not been provided to her during portions of her tenancy? Is the tenant entitled to a monetary award for her loss of quiet enjoyment of the rental premises? Should any other orders be issued with respect to either the landlord's provision of services and facilities in this tenancy or to conduct repairs to this rental unit? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover her filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

On August 1, 2013, the parties signed the fixed term Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord. According to the Agreement, the tenant was to take occupancy of this rental home on September 1, 2013. The end of the fixed term was set at May 31, 2014. Both parties signed a statement in the Agreement in which the tenant confirmed that she was aware that the landlord may demolish the property after the end of the fixed term and that the tenant would be given two months notice to vacate the premises in that event and would not receive any further compensation.

Monthly rent according to the Agreement was set at \$1,450.00, payable in advance on the first of each month, plus 50% of the cost of utilities for this two-unit rental property. Free laundry services and storage outside the rental unit were included in the Agreement. The landlord continues to hold the tenant's \$725.00 security deposit paid on August 1, 2013.

The tenant submitted into written evidence a document entitled "Financial Impact of Heat, Laundry Issues and Storage Issues" in support of her application for a monetary award of \$1,500.00. This document outlined the following issues for which the tenant maintained she should be compensated by the landlord for the alleged failure to provide services or facilities as part of her tenancy:

Item	Amount
Lack of Heat – Inability to fulfill at contract	\$2,228.15
Lack of Heat – Homeopathic Medicine	173.20

Lack of Heat – Requiring Meals at Restaurants & taking Work to Coffee Shops (\$50.00 per day x 14 days = \$700.00)	700.00
Laundry Services (\$40.00 per week x 3 weeks outstanding = \$120.00)	120.00
Lack of Promised Outside Storage Requiring the Purchase of Storage Containers	90.63
Total of Above Items	\$3,311.98

In this document, the tenant also noted that she had allocated considerable time to dealing with the problems of this tenancy, for which she did not provide any estimate. Some of this time was for trips to the Residential Tenancy Branch (the RTB) and to draft reports and assemble materials for the purposes of her application for dispute resolution. At the hearing, I noted that the only cost associated with the hearing process or interacting with the RTB that is recoverable under the *Act* is the recovery of the filing fee for the application.

Analysis

I should first note that section 5 of the *Act* prevents a party from avoiding or contracting out of the provisions of the *Act* and that any attempt to do so is of no effect. I raise this provision as I find that the landlord's inclusion of a provision in the tenancy agreement attempting to prevent the tenant from obtaining any form of compensation if the landlord demolishes the building is in direct contravention of the provisions of section 51 of the *Act*. Section 51 outlines the compensation to be provided by a landlord to a tenant should a landlord issue a notice to end tenancy for landlord's use of the property pursuant to section 49 of the *Act*. This would include the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use that would be required if the landlord decided to end the tenancy on the basis of having obtained all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant (s. 49(6)(a) and (b) of the *Act*). I find that the landlord cannot avoid the requirement of section 51(1) (1.1) or (1.2) of the *Act* to compensate the tenant an amount equivalent to one month's rent if he issues a 2 Month Notice to demolish the rental home, either before or after the end date of the fixed term tenancy agreement. Similarly, the landlord's attempt to avoid paying compensation to the tenant in the event that the house is demolished after the expiry of the fixed term tenancy is of no legal effect in preventing the tenant from making an application for additional compensation pursuant to section 51(2) of the *Act*.

Section 28(d) of the *Act* establishes a tenant's right to the "use of common areas for reasonable and lawful purposes, free from significant interference." Section 32 of the *Act* outlines a landlord's obligations to repair and maintain a rental property in the following terms:

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...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

65 (1) *... the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;..

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

Based on the sworn testimony of the parties and the written and photographic evidence supplied by the parties, I find that the value of this tenancy has been decreased as a result of an ongoing series of problems, which the landlord has either failed to effectively address or has been tardy in addressing.

In advance of this hearing and as entered into written evidence, I find that the parties were able to agree on a rate of compensation for those periods when the tenant was without laundry services that were to have been included in her Agreement. The landlord agreed at one stage to compensate the tenant at a rate of \$40.00 per week for one of the weeks when both parties agreed she was without a functioning washer and dryer. I find that this rate is acceptable compensation for the loss of laundry facilities. I find that the tenant has provided sufficient details to substantiate her claim that she has been without laundry facilities in the rental property for a period of an additional three weeks during the course of her tenancy. I issue a monetary award in the tenant's favour in the amount of \$120.00 to compensate the tenant for the additional three weeks when she has had to take her laundry off-site.

The parties disagreed on the number of days when the tenant has been without heat or with little heat during this tenancy. However, the landlord did not dispute that there have been many days and reasons for the lack of heat to the tenant's rental unit. The parties provided detailed breakdowns of which days the tenant's rental unit was either without heat or with little heat. For example, in his written evidence, the landlord confirmed that there was no heat in the rental unit for a total of 15 days. The landlord noted that four of these days occurred in October and November 2013, seven occurred in December 2013, two occurred in January 2014, one occurred in February 2014, and one in March 2014. The tenant's written evidence provided details on her claim that there have been at least 16 days where she has had no heat and more where there was no heat until 4:00 or 5:00 p.m.

While a landlord may not be responsible for occasional circumstances that arise that lead to a loss of heat in a rental unit, I find that there is a continuing pattern of problems with the heating system in this rental unit. Whether or not the landlord decides to demolish this rental building, he still needs to maintain it to the extent required by section 32 of the *Act* while he continues to rent it to a tenant. I also find that the tenant reasonably expected to have access to a reliable heating source as part of her Agreement. For these reasons, I find that the tenant is entitled to some form of retroactive rent reduction for the heating problems she has encountered during this tenancy. Based on a balance of probabilities, I find that the tenant is entitled to a retroactive reduction in rent for a lack of heating for 20 days of her tenancy.

Placing a value on the lack of heat during the course of this tenancy is somewhat problematic. A lack of heat for a warm day in October may not have the same impact as a lack of heat for the period from December 27, 2013 until January 2, 2014, a period when the tenant said that there was no heat in this rental unit. In the tenant's written evidence, she has claimed for her loss of contract work and for homeopathic medicines.

I find that the tenant has not provided sufficient evidence to support her claims totalling over \$2,400.00 for these items. I also reject her claim that she should be compensated \$700.00 for restaurant meals and trips to the coffee shop, as she again provided little documentation to support these estimates. However, loss of heat during the winter months, especially for the prolonged periods described by the tenant, does constitute a loss in the value of her tenancy and did no doubt add to the tenant's costs.

I find that the tenant is entitled to a monetary award of \$322.19 for her loss of heat for 20 days during the course of her tenancy. This award is calculated on the basis that heating could be considered to be valued at 1/3 of the overall cost of the monthly rent of \$1,450.00, pro-rated to 20 days of a 30 day rental month (i.e., $\$322.22 = \$1,450.00 \times \frac{1}{3} \times \frac{20}{30} = \322.22). As this appears to be a continuing problem, which continues reduced, but to an extent unabated, I order the tenant's rent to be reduced by \$25.00 per month to reflect the inconsistencies associated with her heating supply. I thus order the tenant's base rent for this tenancy reduced to \$1,425.00 per month.

The landlord confirmed that the tenant was supposed to have received storage in an outside shed during this tenancy. However, this has not occurred because the other tenant in this rental building refused to make space for storage in what the tenant believed to have been a shared storage space in this exterior shed. Although the other tenant said that he would construct a separate shed for the tenant's use, this did not occur. The landlord admitted that he had not take action to ensure that the tenant received the storage that formed part of her Agreement. The landlord also testified that the other tenant is ending his tenancy by March 31, 2014, at which time the tenant will have access to the outdoor storage space.

As the tenant did not receive the outdoor storage that she expected to receive when she signed her Agreement, I find that the landlord has not made available a facility that he committed to provide to her. As such, I find that the tenant is entitled to a retroactive rent reduction in the amount of \$50.00 per month for the seven months of her tenancy, totalling \$350.00 for this item. Since the tenant will obtain access to the storage shed as of April 1, 2014, there is no need for any ongoing rent reduction for this item.

Although the tenant agreed that the landlord appears to be in the process of taking action to resolve her complaints about a rodent infestation, I find that the landlord did not take adequate measures to address the tenant's concerns in this regard until shortly before this hearing. I find that the landlord's failure to attend to this matter contravened section 32 of the Act, resulted in a loss of the tenant's quiet enjoyment of the premises and constituted a reduction in the value of her tenancy. I allow the tenant a \$100.00

monetary award for the loss in value of her tenancy resulting from the landlord's failure to address this problem in a timely fashion.

Although the pest control specialist's final report had not yet been received by the landlord prior to this hearing, I also order the landlord to repair a hole (or holes) in the exterior wall of this rental home as recommended by the pest control specialist in order to prevent rodents from accessing this building. I also order the landlord to implement the recommendations identified by the pest control specialist who visited this property on March 24, 2014.

I order the landlord to replace batteries in smoke detectors in this rental building. I dismiss the tenant's request that an order be issued to the landlord to install fire extinguishers in this rental unit as the tenant has provided no evidence that there is any type of municipal bylaw or requirement that the landlord do so.

I heard undisputed evidence that the landlord has not supplied the tenant with a key to her back door because the previous tenant did not return that key to him. The landlord did not wish to bear the expense of replacing the lock and provide the tenant with a key to her back door. I find that the landlord is responsible for replacing this lock and issuing the tenant a key to her back door. I find no merit to the landlord's explanation that he does not have a functioning key to that door. I order the landlord to replace the lock to the tenant's back door and issue her a key to that door by May 31, 2014.

I also issue a monetary award in the tenant's favour in the amount of \$200.00 for her general loss of quiet enjoyment of this property due to the repeated disruptions to the services that she expected to receive as part of this tenancy when she entered into this Agreement. This monetary award is designed to look after the concerns the tenant raised about the uncertainty of the heating system, inconsistently operating pilot lights, the lack of a key for the back door of this rental unit, and other items, too numerous to mention. I dismiss the remainder of the tenant's application for a monetary award for other items, as I find that these have been included in the \$200.00 monetary award issued to the tenant.

As the tenant has been successful in this application, I allow the tenant to recover her \$50.00 filing fee from the landlord.

Conclusion

I hereby order that the monthly rent for this tenancy as of May 1, 2014, be reduced to \$1,425.00, as a result of what I find is a failure to provide the tenant with a consistent

level of services and facilities that she expected to receive when she entered into this Agreement.

I issue a monetary award in the tenant's favour under the following terms for the retroactive loss in value of her tenancy:

Item	Amount
Retroactive Reduction in Rent due to Heating Problems	\$322.22
General Loss of Quiet Enjoyment of Rental Premises and Loss in Value of Tenancy	200.00
Loss in Quiet Enjoyment – Rodent Issue	100.00
Laundry Services (\$40.00 per week x 3 weeks outstanding = \$120.00)	120.00
Lack of Promised Outside Storage (\$50.00x 7 months = \$350.00)	350.00
Filing Fee	50.00
Total of Above Items	\$1,142.22

To implement this monetary award, I order the tenant to reduce her next scheduled monthly rent of \$1,425.00, which is due on May 1, 2014, by \$1,142.22. The monthly rent owed by the tenant for May 2014 is thus reduced to \$282.78. The tenant's monthly rent reverts to \$1,425.00 per month as of June 1, 2014.

I order the landlord to replace the batteries in smoke detectors in this rental unit. I order the landlord to implement any recommendations issued by the pest control specialist who inspected the rental building in March 2014, including but not limited to filling in holes in the exterior of this building so as to prevent rodents from entering this building. I order the landlord to replace the lock to the back door of this rental unit and issue the tenant a functioning key to access and secure her back door by May 31, 2014. If the tenant does not already have access to storage in the outside shed, I order the landlord to ensure that the tenant has access to this storage space. 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: April 01, 2014

Residential Tenancy Branch

