



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL ST. HOLDING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, OLC, RR

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; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

At the hearing held on March 07, 2014 the parties requested an adjournment as the tenant had not served the landlord his evidence on time and the landlord requested more time to review the tenant's evidence. The hearing was adjourned and reconvened on today's date. Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served in person on February 21, 2014.

The tenant appeared at the reconvened hearing, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served Notice of this hearing by the Residential Tenancy Office. All of the testimony and documentary evidence was carefully considered.

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*?
- Is the tenant entitled to reduce rent for repairs not completed?

Background and Evidence

The tenant testifies that this tenancy started on July 01, 2012 for a fixed term tenancy that ended on December 31, 2012 and reverted to a month to month tenancy. Rent for this unit is \$800.00 per month and is due on the 1st of each month.

The tenant testifies that the toilet in his unit was leaking. The landlord was aware of this as the landlord had sent someone in to repair it. That person did not make an effective repair and the toilet continued to leak. The tenant purchased a new wax ring and the landlord reimbursed the tenant for this. However as the tenant is disabled he was not able to fit this wax ring himself and the landlord did not send anyone to do the repair despite many requests from the tenant. The tenant then called Mr Rooter to make the repair and this was paid for by the tenant to an amount of \$291.90. The tenant testifies that he provided a copy of the invoice for the repair to the landlord on January 09, 2014 the day the repair was made. The landlord has not reimbursed the tenant for this repair and the tenant seeks a Monetary Order for the cost of this emergency repair.

The tenant testifies that even through the repair to the toilet was successful the toilet began to back up and the lines and sump pump shared by other units in the building became blocked due to other tenants using an excessive amount of toilet paper and flushing tampons down their toilets. The tenant experienced dirty water and feces coming up through his toilet and through his bathroom shower and tub. The tenant has

had to clean up this dirty water and feces over many months of his tenancy and has been unable to use his bathroom for many months due to these blockages. The tenant testifies that at least every three days his toilet, shower and tub will back up. The tenant has to then go across the road to MacDonald's to use their washroom facilities.

The tenant testifies that he has notified the landlord on many occasions as have the other tenants but the landlord has done nothing in all the months of this tenancy to rectify the problems other than putting a note on the building door asking tenants not to flush tampons or other objects down the toilets.

The tenant testifies that the boiler for the hot water in the building broke down and all the tenants were without hot water for 14 days during September, 2013. The landlord then had the boiler repaired or replaced.

The tenant testifies that due to these issues, he has had to clean his bathroom floor with bleach each time the toilet overflows and use amounts of air fresher to get rid of the smell of feces. The tenant testifies that he has also had to launder his clothes which have come into contact with this contamination. The tenant testifies that he has had to put a heater in the bathroom to help dry out the floor as the toilet overflows so often and this has increased the tenant's Hydro costs. The tenant testifies that his Hydro bills are normally around \$145.00 every two months however they have spiked to \$226.18. The tenant has provided one Hydro bill in evidence for the months of November, 2013 to January, 2014.

The tenant seeks compensation for the extra cleaning he has to do, the cost of the bleach and air fresheners and the extra laundry. The tenant also seeks compensation for the additional Hydro bills. The tenant seeks to recover \$113.62 to cover these additional costs.

The tenant seeks a rent reduction as the landlord has failed to comply with s. 32 and 33 of the *Act* in ensuring the repairs are carried out in a timely manner, for reducing the

facilities the tenant has of hot water for two weeks and the reduction of the tenants use of his bathroom to use the shower, the tub and the toilet.

The tenant seeks an Order for the landlord to comply with s. 32 and s. 33 of the *Act* with regards to repairs being carried out in a timely manner and to ensure regular maintenance is done in the building to ensure the rental unit is fit for occupation.

The tenant calls his witness DC. The witness testifies that he is also a tenant living in this building. The witness testifies that he has experienced the same issues with the lines and sump pump blocking and is aware that the tenant has suffered similar problems. The witness testifies that in his unit the dirty water and feces came up in his kitchen sink and covered his counter tops and his toilet and bath also backed up with this dirty and disgusting water. The landlord eventually moved the witness to another unit. The witness testifies that there was no hot water for two weeks in September, 2013.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me. With regard to the tenants claim for the cost of emergency repairs; I refer to s. 33 (a)(b) and(c)(ii) of the *Act* which 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

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

The tenant is required to contact the landlord and if the repair is not made then the tenant can have the repair done and provide a written account to the landlord for reimbursement. I am satisfied that this toilet repair falls under s.33 of the *Act*. I am also satisfied from the evidence before me that the tenant had the toilet repaired on January 09, 2014 and provided a copy of the invoice to the landlord. As the landlord has not reimbursed the tenant for this invoice the tenant is entitled to recover the cost of this emergency repair to an amount of **\$291.90** and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the tenants claim for compensation for having to clean up the dirty water when the toilet, shower and tub overflowed; I am satisfied with the undisputed testimony before me that the tenant has suffered as a result of the lines and sump pump backing up over the course of the tenancy. The tenant has not shown how long this problem has been occurring for; however, I find the tenants claim to be reasonable that he has had to purchase additional products to bleach the floor, toilet, tub and shower and had to clean any clothes that have been in contact with this contaminated water. I am not however satisfied that the tenants hydro bills have increased by \$81.18 over an undetermined period as the tenant has provided only one utility bill in evidence. Consequently I must limit the tenants claim to an amount of **\$75.00** in compensation.

With regard to the tenants claim for a rent reduction; I refer the parties to s.32 of the *Act* which states:

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 am satisfied from the undisputed testimony and evidence before me that the landlord has not maintained the building sufficiently to prevent blockages to the pipes and sump pump which allows foul and dirty water to seep back into the tenant's unit. The tenant is forced to then use the toilet facilities at a nearby restaurant. The tenant has repeatedly asked the landlord to make repairs and to date no repairs have been completed to maintain the unit in a state of repair that complies with the health, safety and housing standards required by law. I therefore uphold the tenants claim for a rent reduction. The tenant has insufficient evidence to show when this problem first occurred but as the tenant first filed his application in February, 2014 I am satisfied that this problem is ongoing since at least that date. The tenant is therefore entitled to a retrospective rent reduction from February to May, 2014 of \$100.00 per month to an amount of **\$400.00** and this amount will be included in a Monetary Order issued to the tenant. Going forward the tenant is entitled to reduce his rent by **\$100.00** per month until such a time as the landlord rectifies this issue with the dirty water backing up into the tenant's unit, pursuant to s. 65 of the *Act*.

I further find the tenant was without hot water for two weeks in September and is entitled to some compensation for this loss of a facility. I therefore find the tenant is entitled to an amount of **\$50.00** and this will be included in a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, I HEREBY ORDER the landlord to ensure they comply with s. 32 of the *Act*. The landlord must make repairs to the plumbing to prevent dirty water coming into the tenant's unit through his toilet, sinks, shower or bathtub and ensure the plumbing is regularly maintained.

The tenant will receive a Monetary Order for the following amount:

Emergency repair	\$291.90
Compensation for cleaning	\$75.00
Compensation for lack of hot water	\$50.00
Rent reduction from February to May	\$400.00
Total amount due to the tenant	\$816.90

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 **\$816.90**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenant to reduce his rent by **\$100.00** per month from June, 01, 2014 until repairs are made to the plumbing

I HEREBY ORDER the landlord to make repairs to the plumbing and to maintain the plumbing pursuant to s. 32 of the *Act*. The landlord must make repairs within two weeks of receiving this decision.

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: May 01, 2014

Residential Tenancy Branch

