



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord on May 27, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs or repairs?
- b. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- c. Whether the tenant is entitled to a monetary order?

Background and Evidence

The tenancy began on November 1, 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$500 per month payable in advance on the first day of each

month. The tenant(s) paid a security deposit of \$250 at the start of the tenancy. The tenant vacated the rental unit on May 30, 2014.

Application for an order for emergency repairs, repairs or an abatement of future rent:

I dismissed the tenant's application for emergency repairs, repairs and an abatement of future rent as the tenancy has come to an end and those claims are moot.

Application for a monetary order:

The tenant seeks a monetary order of \$3200 alleging the premise are virtually inhabitable due to extensive mould, electrical problems, structural problems (house is sinking in one corner, drafty) and rodents.

Both parties presented considerable evidence much of which was not relevant to the issues in this hearing.

Briefly the relevant evidence of the tenant is as follows:

- She advised the landlord of the presence of mould on several occasions but the landlord ignored her requests and told her to clean the mould. She gave the landlord a letter expressing her concerns last year but failed to keep a copy.
- She called the insurance company because the heaters would overheat and there was no way of turning them off. The landlord told the tenant she should turn the heaters off at the breaker box.
- From 2009 to November 2013 the heater in the bathroom never worked.
- Last summer the landlord entered her rental unit while she was out of town.
- One corner of the house is sagging, the house is uninsulated and the windows are single pane. The landlord told the tenant he would not waste money on fixing this house and probably tear it down in a few years.
- The ceiling needs to be redone due to leaks.
- Tiles are coming off the floor.

- There is considerable mould in the rental unit and the bathroom needs to be gutted and fixed.
- She is seeking compensation for the additional cost of hydro because the rental unit was not insulated.
- The tenant produced a copy of the local newspaper which ran an article based on her complaints.
- The tenant produced photocopies on photographs that were not legible.
- She also produced copies of her hydro bills. However, she did not provide evidence as to what one might expect to pay in hydro in an insulated house in this area.

The landlord disputes the tenant's evidence. She testified the tenants actions are retaliatory as the tenant has failed to pay the rent since November 2013 and the landlord had served a Notice to End Tenancy on the Tenant.

Briefly, the relevant evidence of the landlord is as follows:

- There was no mould in the rental unit when the tenant took possession in 2009. The tenant has acknowledged this in her statement.
- The mould has been caused by the tenant's poor housekeeping.
- The previous tenant did not complain of problems of mould.
- In April 2013 the representatives of the fire insurance company phoned and we hired an inspector to look at the house. That inspection was conducted on June 8, 2013.
- "The landlord included his report which identified the following as Property Risk Assessment:
 1. Outlet in Bedroom must have a cover plate installed.
 2. The electric heater cover was off. It is recommended that it be replaced.
 3. Evidence of mould noted in residence. A qualified professional should be contacted to assess and correct the problem.

4. Current building code requires that a handrail be provided for exterior stairs where there are 4 or more risers.
 5. Open porch must be protected by guardrails.
 6. In order to quickly detect an incipient fire condition, detector(s) must be installed, ensuring that there is a unit located on the ceiling on each level of the residence. Although portable fire extinguishers are not mandatory in private residences, your insurer believes the benefit of these life safety devices should be brought to the attention of their valued clients....
 7. The ceiling in the living room appears to be bowed. It is recommended that a licensed contractor be consulted to review the structure of the ceiling inside of the home. Repairs should be made in a timely fashion. It is further recommended that the work be completed under a municipal permit process.
 8. It is recommended eaves troughs, downspouts and extensions are added to insure roof runoff is directed at least six feet from the foundation. This will minimize soft saturation in close proximity to the foundation walls and help prevent seepage into the basement.
 9. The shut off tap above the hot water tank in the bathroom is leaking. It is recommended that tap be replaced.”
- The landlord further testified an electrical contractor was hired in October 2013 who worked repaired much of the electrical system at a cost of more than \$2000.
 - The tenant left the rental unit in a very poor condition when she left.
 - She denied that she entered the rental unit without the permission of the tenant.

The Relevant law:

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Analysis:

The Application for Dispute Resolution filed by the tenant seeks compensation in the sum of \$3200. After carefully considered all of the disputed evidence presented by the parties I determined the landlords have failed to perform their obligation under section 32 of the Residential Tenancy Act. I am satisfied the tenant's enjoyment of the rental unit was reduced because of poor condition of the rental unit. I determined the landlord was slow in responding to many of the tenant's legitimate concerns and responded only after being advised that their insurance was going to be cancelled. However, this is not a situation where the landlord has not done anything. The landlord spent over \$2000 in making electrical repairs.

However, based on the evidence presented I determined the rental unit was not as bad as the tenant alleges. The tenant acknowledges there was no mould when she took possession of the rental unit. I am satisfied the lack of insulation increased hydro cost although it is impossible given the lack of evidence presented by the tenant to determined with any degree of precision how much extra the tenant would be paying. The law imposes an obligation on the tenant to mitigate their loss. In my view this includes an obligation to file an application for a repair order in a timely manner rather than wait until the end of the tenancy and then bring a claim against the landlord for the entire period of the tenancy.. The tenant filed the within application 5 days before she vacated the rental unit.

In the circumstances I determined the tenant is entitled to compensation in the sum of \$1000.

Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

- 72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

Section 26 of the Residential Tenancy Act imposes an obligation on the tenant to pay the rent even where the landlord has failed to comply with the Act. The evidence presented indicates the tenant paid a portion of the rent in November 2013 but has not paid any rent since then vacating at the end of May 2014. Section 72(2)(a) provides that where there is an order for the payment from a landlord to a tenant such amount may be deducted from rent due to the landlord. I determined that it was appropriate to order that the payment of the \$1000 be deducted from rent owed to the landlord.

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: July 18, 2014

Residential Tenancy Branch

