



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 689265 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, ERP, RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested rent reduction for emergency repairs completed; an Order the landlord complete emergency repairs and repairs to the rental unit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The tenant provided affirmed testimony that on September 4, 2014 he served copies of the Application for Dispute Resolution and Notice of Hearing to the landlord, sent to the address indicated on the tenancy agreement. A Canada Post tracking number was provided as evidence of service. The tenant checked the Canada Post tracking site on-line and determined that the landlord refused the registered mail. The envelope returned to the tenant was marked as "moved."

Refusal to accept registered mail or a failure of the landlord to provide a current service address does not allow a party to avoid service of documents.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

Therefore, pursuant to section 71 of the Act I find that the landlord has been sufficiently served with Notice of this hearing sent to the landlord's address provided on the tenancy agreement . The landlord did not appear at the hearing.

Issue(s) to be Decided

Is the tenant entitled to reduce rent in the sum of \$216.00 for the cost of emergency repair completed?

Must the landlord be Ordered to complete repairs and emergency repairs to the rental unit?

Background and Evidence

The tenancy commenced in June 2013; the 1 year term has ended and has converted to a month-to-month tenancy. Rent is \$1,700.00 due on the 1st day of each month. The tenant rents a single family home that he understands is slated for eventual demolition.

The tenant does not have personal contact with any agent of the landlord. He used an email address that was included with the advertisement and has received a reply from "customer care." The 1 email reply sent to the tenant by the landlord includes a notation at the conclusion of the email, indicating the same address used by the tenant when serving the notice of this hearing to the landlord.

On June 16, 2014 the tenant emailed the landlord and set out a number of requests for repair and maintenance. The tenant did not receive a response until July 29, 2014. The landlord said they would come to the home to complete an inspection, which occurred on August 7, 2014. After the inspection no follow-up or further contact has been made by the landlord.

The tenants had requested the following repairs:

- Replace 4 sq. meters of tile in the bathroom which have mould;
- repair the bathroom window as it cannot be opened and closed properly, if at all;
- Replace water reservoir of the toilet with insulated reservoir due to the condensate that forms causing water to gather on the floor;
- insulate the front and back doors to prevent air flow;
- Replace faucet in the bath tub and kitchen;
- Ensure the exterior doors are properly insulated/weather-stripped to stop airflow; and
- Investigate leak under kitchen sink.

The tenants' email indicates he understands the home will be demolished but they feel they are over-paying given the need for repairs. The tenant pointed out that heating costs are excessive and that the overall condition of the home is poor.

After not hearing from the landlord the tenant completed what he submits was an emergency repair and replaced the kitchen faucet. Water was running from the faucet and there was risk of electrical shock. The tenant submitted photographs of the old

faucet, the repair completed and an invoice for the faucet purchased. The tenant charged \$100.00 for the time taken to repair the faucet.

The tenant provided a copy of a home inspection web site estimate of costs for certain repairs; a faucet was listed at \$250.00.

The tenant sent photos and proof of repair to the landlord, via email, on August 24, 2014. The tenant requested compensation. He said was told by the landlord that this was not an emergency repair and that he was not entitled to compensation.

Photos of the bathroom tile showed tiles that were obviously aged. Numerous tiles are missing from the wall. The tenant said there is also a hole in the tile that they have had to tape, as water runs down the inside to the wall into the basement.

The bathroom fan operates from a single switch but the tenant suspects it is not functioning properly. The moisture is such that water pools on the floor. The window cannot be opened, which would allow some air exchange.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

From the evidence before me I find that the tenant is entitled to compensation in the sum of \$216.00; what I find to be a reasonable cost for repair of the kitchen faucet. I find that the landlord was given adequate notice of the need for repair and that after an almost 2 month delay from the time the report was made by the tenant, the landlord still failed to adequately respond. I find that the repair does meet the standard set out in section 33 of the Act; repair to a plumbing fixture.

Therefore, the tenant is entitled to reduce the next month's rent owed by the sum of \$216.00.

Section 32 of the Act provides, in part:

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.

Whether the home is going to be demolished or not the landlord has an obligation to make repairs so that the home meets basic housing standards. The landlord is receiving rent for the property, which then imposes certain obligations on the landlord. From the evidence before me I find that repairs are required and I have made the following Order that, no later than September 30, 2014 the landlord will:

- Replace all missing bathroom tiles and the hole in the wall and ensure that moisture is not present behind the tiles;
- Replace the bathroom faucets;
- Repair or replace the bathroom fan to ensure that it meets current standards for air circulation in a bathroom, allowing humidity to be reduced to acceptable levels;
- Ensure that the exterior doors are properly weather-stripped or otherwise repaired to stop air flow around the doors; and
- Repair the bathroom window so that it can easily be opened and closed; this may involve replacement of the window with a unit that can be easily opened and closed.

These repairs must be completed to acceptable standards.

If the landlord adequately responds to this repair Order, the issue of water pooling on the bathroom floor should be resolved. If it is not, the tenant is to notify the landlord who must, within a reasonable period of time, complete further repair.

Once all of the repairs are fully completed as Ordered the landlord must provide the tenant with a signed, dated, written notice informing him the repairs are completed. The landlord's agent's name must be printed on this notice of completion.

If repairs are not completed by September 30, 2014 and notice of repair is not given by that date then I find, pursuant to section 62(3) and 65(1)(f) of the Act, that the tenant will be entitled to rent abatement in the sum of \$200.00 per month until such time as the repairs are completed and notice is given to the tenant.

Once repairs are completed and notice has been given to the tenant the tenant must cease the rent abatement. The parties are at liberty to reach a mutual written agreement that repairs have been completed.

If repairs have been completed as Ordered and the tenant fails to cease rent reductions the landlord is at liberty to issue Notice ending tenancy for unpaid rent. If that Notice is disputed the landlord must bring forward all evidence demonstrating that the repairs were completed to an acceptable standard, a copy of the notice of completion and the date by which all repairs were completed.

I find that the tenant's application has merit and that the tenant entitled to recover the \$50.00 filing fee from the next month's rent due.

Therefore, effective October 1, 2014 rent owed will be \$1,434.00; if all repairs have been completed as Ordered, by September 30, 2014.

If repairs are not completed as Ordered by September 30, 2014 I find that rent owed on September 1, 2014 will be \$1,234.00.

Until such time as all repairs are completed as Ordered rent owed, beyond October 1, 2014, will be \$1,500.00 on the first day of each month.

Conclusion

Orders for repair and compensation via rent abatement have been issued.

This decision is final and binding and 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: September 17, 2014

Residential Tenancy Branch

