



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, MNR, MNDC, OLC, ERP, RP, LRE, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end tenancy than permitted by the *Residential Tenancy Act*; for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; 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 *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

At the start of the hearing, the tenant informed me that the tenancy had ended on August 15, 2014. Therefore, most of the remedies that the tenant has applied for as mentioned above, are no longer relevant. Accordingly, this hearing only dealt with the tenant's application for a monetary order for compensation for the cost of water, for the loss of the use of the basement for five months, for the cost of labour to repair the basement and for the cost of hydro.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenancy started on March 01, 2011 and ended on August 15, 2014. The monthly rent was \$900.00 due on the first of each month. Prior to moving in, the tenant paid a security deposit of \$425.00. The tenant filed a copy of the tenancy agreement and addendum. The tenancy agreement says water is not included in the rent.

The Addendum states, in part:

“2. TENANTS are in full knowledge and awareness of well-water contamination at RENTED LOCATION; and are in full knowledge and awareness that use and/or consumption of the well-water is discouraged and not recommended. Tampering with restrictive barriers to access well-water may be followed by criminal charges.

“3. TENANTS are in full knowledge and awareness of their personal responsibility to provide clean water for their use and consumption for themselves and the adjacent property. A concession of \$50 monthly to the per-month-rent is afforded the TENANTS as compensation; therefore, the per-month-rent is \$850, provided the above-mentioned condition of supplying water to the adjacent dwelling is met.”

The tenant testified that the landlord promised to have the water supply reinstated within six months. The landlord agreed that he had and stated that he made several efforts to restore the water supply, without success. After every attempt to purify the water, the landlord sent samples to the laboratory. The landlord stated that he had the water tested 5-6 times and every test result indicated that the water was not safe for consumption or use.

The landlord filed copies of test reports and an invoice from the company he hired to work on making the water supply safe for use.

The landlord stated that it was determined that the water was getting contaminated by the septic tank and therefore he moved the septic tank in an attempt to resolve the problem. He hired a company to carry out the purification of the water but the problem continued. The landlord stated that even at this time the problem still exists but the water is less contaminated than before.

The landlord's argument was that the water supply situation was clearly explained to the tenant verbally and in the written addendum. The tenant signed the addendum and agreed to take care of the costs of his own water consumption and that of the other occupant of the property. The landlord maintained that the water supply was not a material term of the tenancy.

The tenant stated that he incurred costs to have water trucked in to the house for his use and for the use of the other tenant on the property. The tenant is claiming \$3,000.00 as compensation for the cost of water. The tenant filed seven receipts for the supply of water over the entire tenancy. The tenant stated that he did not have all the receipts but had incurred a cost of \$107.00 every 17 days.

The tenant stated that in January 2013, the basement flooded and that he helped in the restoration of the basement. The landlord stated that he sent his contractor to do the restoration work but the tenant had already started the work. The female tenant stated that the contractor's work was not good and therefore the male tenant did most of the work himself.

The tenant stated that the work took five months to complete and for the duration of this restoration work, he did not have use of the basement and is claiming a rent rebate of \$425.00 per month for a total of \$2,125.00.

The landlord stated that he did not ask the tenant to do the work and did not agree to pay the tenant for work done. He stated that the work was delayed because his contractor was restricted from doing the repairs by the tenant's aggressive behaviour and the clutter inside the home. In addition the landlord stated that the tenant insisted on doing the work himself and did not have access to commercial grade equipment, which contributed to the delay.

The tenant did not pay rent for the two months claiming it as compensation. The landlord served the tenant with a notice to end tenancy for non payment of rent, but eventually agreed to waive the rent in return for the work done by the tenant.

The tenant stated that he incurred elevated hydro bills due to lack of heating and increased usage of the other occupant of the property and is claiming \$300.00. The landlord agreed to pay the tenant \$150.00 towards the cost of hydro.

Analysis

Based on evidence and testimony of both parties I find:

The tenant was informed prior to the start of tenancy that the rental unit was not equipped with potable water. The landlord reduced the rent by \$50.00 to accommodate the lack of water. The tenant signed the addendum and acknowledged that he rented the unit knowing full well that the water supply was not available and that he was responsible for the cost of purchasing water. He further agreed to supply water to the other occupant of the rental property.

The tenant argued that the landlord promised that the problem would be resolved in six months. The landlord agreed that he had told the tenant that he would be fixing the problem and that it would take six months before the water supply was safe to use. The landlord testified that he made and continues to make efforts to restore the water supply, but the multiple efforts made by him failed and even though the bacterial count is less at this time, the water is still not safe for consumption.

Based on the testimony of both parties, the tenancy agreement and the addendum, I find that the tenant agreed to rent the unit with a \$50.00 rent reduction to compensate for the lack of a water supply. Based on the test reports filed by the landlord, I accept the landlord's testimony that he made efforts to restore the water supply. Even though the landlord had verbally assured the tenant that the water supply would be restored within six months from the start of tenancy, I find that the supply of water was not a material term of the tenancy and accordingly, I find that the landlord is not responsible for the cost of water. Therefore the tenant's claim for \$3,000.00 is denied.

The tenant unilaterally withheld two months' rent as compensation for the work done by him to restore the basement after the flood. The landlord stated that he did not ask the tenant to do the work and in fact hired a contractor to carry out the repairs. Based upon the testimony of both parties, I find that the landlord hired a contractor to do the work but the tenant did not approve of the quality of the contractor's work and took it upon himself to finish the restoration work. There was no verbal or written agreement between the two parties regarding compensation for work done, but the landlord eventually agreed to allow the tenant to live rent free for two months.

The tenant stated that the two months' rent covered his time spent doing the repairs and was now asking for compensation for the time during which the basement was not available for use. The tenant is claiming \$425.00 per month for five months. (January to May 2013).

Based on the testimony of both parties, I find that by not applying for dispute resolution during the tenancy, the tenant took no steps to seek compensation for the loss of use of the basement, during the repairs. Accordingly, I find that the tenant is not entitled to compensation because he failed to take steps to address the issue in a timely manner. In addition, the tenant has already received compensation for issues related to the flood in the basement and therefore the tenant's claim for additional compensation is dismissed.

The landlord agreed to pay the tenant \$150.00 towards the excess hydro and the tenant accepted the offer. Therefore I award the tenant \$150.00.

Since the tenant has not proven his claim, he must bear the cost of filing his application.

The tenant has established a claim of \$150.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$150.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$150.00.

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: September 25, 2014

Residential Tenancy Branch

