



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALLY SCALES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, MNDC, RR

Introduction

This matter dealt with an application by the Tenant for compensation from the Landlord for loss or damage under the Act, regulations or tenancy agreement, for emergency repairs for health and safety reasons, for repairs to the unit site or property and to allow the Tenant to reduce the rent while the repairs or services are being completed or supplied.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on October 4, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

It should be noted the Landlord’s agent requested an adjournment because she did not receive the Tenant’s hearing package within the 7 days prior to the hearing. The Landlord’s agent said she did not believe she was the Landlord so she returned the hearing package to the Tenant after being served on October 4, 2014. The Arbitrator pointed out that the Landlord’s agent is named on the Tenant’s application and is signed on the tenancy agreement as the Landlord’s agent. The Arbitrator dismissed the Landlord’s agent’s request for an adjournment as she is the Landlord’s agent and she was served and was deemed to be served on October 4, 2014, which was within the requirements of the Act.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation for loss or damage and if so how much?
2. Are emergency repairs needed?
3. Are general repairs needed?
4. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started on May 1, 2011 as a month to month tenancy. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on March 10, 2011 and a pet deposit of \$100.00 was to be paid, but the Tenant said she has not paid it as of yet.

The Tenant said the wall heating and air conditioning unit in the rental unit has not worked for approximately 2 years and she would like it repaired or replaced. The Tenant said this is the main heat and air conditioning unit in the rental unit, although there are baseboard heaters in the bathroom and bedroom. As well the Tenant said she is requesting compensation for the increased hydro costs to operate the portable heat and air conditioning units that she has been using. The Tenant said she has calculated this cost to be \$600.00. The Tenant said that she reviewed her Hydro bills and her monthly costs have increased from \$50.00 per month to \$100.00 per month over the last year. Consequently the Tenant calculated her loss as \$50.00 per month for 12 months for a total claim of \$600.00. As well the Tenant said she is requesting a rent reduction for the time period that it takes for the wall heat/ air conditioning unit to be repaired or replaced.

The Landlord's agent and the Owner said that the wall units in all the rental units have been problematic and they are unable to order new ones or repair the old wall units as they are discontinued. The Landlord's agent said they have supplied portable heaters and air conditioners to the other tenants in the complex and they appear to be satisfied with this arrangement. The Landlord's agent said that they provided the Tenant with a portable air conditioner and she believes the Tenant supplied her own portable heaters.

The Tenant said the Landlord did provide a portable air conditioner and she borrowed portable heaters, but the portable units were not adequate as she was too hot in the summer and too cold in the winter. The Arbitrator asked the Tenant when she told the Landlord about the broken wall unit and the Tenant said it was some time in the spring of 2014. As well the Tenant said she wrote the Landlord in August, 2014 and emailed in September, 2014 and nothing has happened to repair the wall unit. The Tenant said she just wanted the heater/air conditioner in the unit to be repaired.

The Landlord's agent said she was aware the wall unit was broken approximately 5 month ago and the Tenant was provided with a portable air conditioner. The Owner said the wall units are discontinued and to replace them is too expensive, therefore he has been supplying the other tenants with portable heater and air conditioners. The Owner said the other tenants are OK with this. The Owner said he has no plans at present to repair the wall heater/air conditioners.

The Landlord's agent said she did receive the Tenant's letter dated August 5, 2014 and she forwarded it to the owner of the property. The Owner said he received the letter of August 5, 2014 and an email from the Tenant dated September 8, 2014. The Owner

said he did email the Tenant back saying that he was not available to discuss the issue at the present time but he would get in touch with her.

The Tenant said the neither the Landlord's agent or the Owner got in touch with her up to this time and that is why she made the application.

The Landlord's agent and the Owner both questioned the calculation of the increase of the Tenant's hydro costs as rates have gone up and the Tenant has added a dishwasher to the rental unit. As well the Landlord's agent said she would like to see more hydro bills to better understand the calculation of the Tenant's claim of \$600.00.

The Tenant said she just took the difference in the new bills over the old bills and it was \$50.00 per month.

A settlement agreement opportunity was offered to the parties and no agreement was achieved.

The Tenant said in closing that she liked living in the rental unit, but she wants the heater/ air conditioner repaired or replaced.

The Landlord's agent said in closing that the Tenant has not proven the increase in hydro costs as it could be rate increases or more usage, therefore the Tenant should not be successful on her damage claim of \$600.00.

The Owner said in closing that the wall units are too expensive to replace and he cannot repair the old units so he is offering portable units to his tenants for heat and air conditioning.

Analysis

Section 32 of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

Therefore the Landlord is obligated to repair items include in the rental unit at the start of the tenancy. As the wall heater/ air conditioner is the main climate control unit in the rental unit, I find the Landlord is responsible to repair or replacement this unit. Portable heat and air conditioning units are acceptable as a temporary measure to heat or cool a rental unit while repairs or replacement are made to the main sources of heat and air conditioning. Consequently I order the Landlord/Owner to repair or replace the wall heating/air conditioning unit in the rental unit or provide equivalent services that are agreed to in writing by the Tenant. As well I order the Tenant to retain \$50.00 per

month of the rent payment until the wall heating/air conditioning unit is replaced or repaired. This rent reduction is made up of \$25.00 per month for the loss of use of the wall heater/ air conditioner and \$25.00 per month for the inconvenience and potential extra costs of the portable heaters and air conditioners. The Landlord/ Owner may require some time to do the repairs; therefore I Order the rent reduction to start in December, 2014. The rent will be reduced from \$750.00 per month to \$700.00 per month.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Tenant has provided hydro receipts for the increased cost of her hydro bills and she has claimed that these increases are due to operating portable heaters and the portable air conditioner. The Tenant's claims have some merit, but so do the Landlord's agents claims that the Tenant's increase in hydro costs could partially be because of rate increases and additional usage, as the Tenant has added a dishwasher to the rental unit. These items could account for a portion of the rate increase. It is the Applicants responsibility to prove the **actual loss or damage** they have incurred and if it is unclear then the burden of proof is not met. In this situation I find the Tenant has not proven an actual loss but an estimated loss and I do not accept the Tenant's calculations as grounds to award the Tenant the loss of \$600.00 for increased hydro costs that she is claiming. The Tenant's damage claim of \$600.00 is dismissed without leave to reapply.

Conclusion

I order a reduction of rent of \$50.00 for each month starting December, 2014, and continuing until the wall heater/air conditioner is repaired or replaced.

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: October 20, 2014

