



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNDC ERP RP RR FF

Introduction

This hearing was convened in response to an application filed by the tenant under the Residential Tenancy Act (the Act) seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the landlord to make repairs to the unit, and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee.

Both parties attended the hearing and each acknowledged receiving the evidence of the other. The parties were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide their testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?
Should the landlord be Ordered to make repairs?

Background and Evidence

The *relevant* evidence in this matter is that the tenancy started July 01, 2014 as a fixed term tenancy with an end date of December 31, 2014. The payable rent is \$2650.00 per month for, what the parties agreed comprises of a house of approximately 2800 square feet. At the outset of the tenancy the parties conducted a move-in inspection which they recorded in a Condition Inspection Report submitted into evidence. The tenant claims that a month after they moved in, they determined there were fleas in their rental unit which they tried to manage on their own. The tenant testified they have a pet cat, but that they have not had fleas before this episode, therefore they determined the fleas were present from the outset of their tenancy. The landlord acknowledged the

previous tenant had a pet. The parties agreed that the landlord was not notified of the flea problem until September 09, 2014 and again on September 15, 2014, in a letter. The following day the landlord received information from a pest control professional that, in their estimation, the fleas were not remnants of the previous tenancy as it was now over 2 months after the new tenant moved in, therefore the landlord determined the tenant's pet as likely responsible for introducing the fleas and as a result the cost of eradicating the fleas should not be theirs to bear. In the second week of September 2014 the tenant paid for a flea treatment for their cat and medication for their son's insect bites. The tenant testified that ultimately they paid for a treatment to eradicate the fleas in the rental unit on September 29, 2014. Subsequent to the treatment of the rental unit the tenant claims they stayed in a hotel as they were advised that due to their son's asthma condition they should stay out of the rental unit overnight. The tenant provided a quote for a flea treatment of the rental unit, photographs of their son with apparent insect bites, and invoices for the cat's flea treatment and the medication for their son. The tenant testified that they paid \$160.00 for alternate accommodations on September 29, 2014 and provided quotes for similar accommodations.

The tenant claims that the basement "rec-room" comprised of 294 square feet has not been usable from the outset of the tenancy – initially because of security concerns because of a missing window pane, which the landlord testified was originally boarded. The parties agreed the window was ultimately repaired September 18, 2014. Since then, the tenant claims that because of an odor and indications of mold in a corner of the room it remains unusable. The landlord testified they were in the same room on September 18, 2014: the room was vacant and they did not notice an odor. The tenant is claiming loss of use of the room for 3 months in an apportioned amount of 10.5% of the payable rent during the period of the missing window and ongoing abatement of rent because of the purported odor and mold. The landlord testified that the tenant has no basis to support their claim for loss of use.

The tenant claims that a toilet has been dysfunctional from the outset as it does not flush reliably. The parties agree the landlord made a repair and it seemed to operate as intended, but the tenant now claims the toilet remains broken through no fault of theirs. The landlord committed to repairing the toilet, forthwith. The tenant provided a quote for a toilet repair.

The tenant testified they are self-employed and that as a result of issues related to the rental unit they have forgone work suffered a loss of work revenue in the amount of \$4500.00. The tenant relies on their evidence of issues of the tenancy as proof they have forgone compensated work and that the landlord should therefore replace the claimed income loss. The landlord disagrees.

The tenant and landlord were both apprised that they are each responsible for their own costs to present, advance, or defend the application before this hearing. As a result, the tenant's claim for photograph development in support of their claims was preliminarily **dismissed**.

Analysis

In this matter the burden of proving claims of loss rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the following test:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the landlord in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the loss.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

I find that the landlord was not aware of a purported flea problem until September 9, 2014. In addition I find that the tenant's son received treatment for insect bites, their cat received treatment for fleas, and the tenant informed the landlord in writing – all in the second week of September 2014, despite the tenant's determination of a flea problem 6 weeks prior. As a result, I do not find the tenant's version of events supports their claim the previous tenants left the fleas behind. Alternatively, I find the landlord's version is not more compelling. The landlord has not proven that the previous tenant left the rental unit free of fleas – despite they also had pets. Regardless of how the fleas or

insects may have established in the rental unit, **Section 32** of the Act states that the landlord must maintain the residential property in a state of repair that complies with health, safety and housing standards required by law and make it suitable for occupation by a tenant. It must also be noted that **Residential Tenancy Policy Guideline #1** states that a landlord is responsible for insect control. As a result, I find the landlord is liable for the cost of treating the rental unit for fleas in the claimed amount of **\$211.68**.

I find that had the tenant informed the landlord earlier of an insect problem and the landlord failed to respond as obligated under the Act within a reasonable period the tenant's claim for their son's treatment could be viewed as arising from a foreseeable result of the landlord's breach. However, in this matter, I find the son's treatment cost did not arise from negligence by the landlord, and I therefore **dismiss** this portion of the tenant's claim.

I find the tenant is responsible for the health requirements of their pets, and despite the landlord's statutory obligation under the Act in relation to pest control, the tenant has not proven their cat required treatment because of negligence by the landlord and I therefore **dismiss** this portion of the tenant's claim for their pet's treatment for fleas.

I find that despite the landlord's statutory obligation under the Act, the tenant did not provide evidence to support that their claim for alternate accommodations on September 29, 2014 arose from negligence by the landlord, and I therefore **dismiss** this portion of the tenant's claim.

I find the tenant has not provided any evidence to support their claim for a loss of income as prescribed/required by the above test of **Section 7** of the Act. As a result, I **dismiss** this portion of the tenant's claim.

I accept the tenant's evidence that the basement "rec-room" was compromised from the outset of the tenancy to September 18, 2014 because of a missing window glass which the landlord agreed to repair, according to the parties' condition inspection report agreement of July 05, 2014. I find the tenant has not provided sufficient evidence to support their claim that since the glass repair the "rec-room" has been fatally compromised by an odor and/or presence of mold. As a result, I grant the tenant a reduction in the value of the tenancy for the period of July 1 to September 18, 2014 in the limited amount of **\$720.00**.

I accept the landlord's testimony that they will repair the dysfunctional toilet forthwith. The tenant is cautioned they must not unreasonably delay the landlord from carrying out this responsibility. On reflection, I **Order** that if the landlord does not repair the toilet within 15 days of the date of this Decision, the tenant is authorized to have the toilet

professionally repaired and may deduct the invoiced cost from rent with provision of the invoice.

As the tenant has been partly successful in their application, I grant the tenant partial recovery of their filing fee in the amount of **\$50.00**.

Calculation for Monetary Award

Insect control treatment	211.68
Loss of use / rent abatement	720.00
Filing fee	50.00
Total monetary award to tenant	\$ 981.68

Conclusion

The tenant is awarded **\$981.68**. **I Order** that the tenant is authorized to deduct this amount from future rent.

I Order the tenant is authorized to repair the subject toilet and recover the associated cost only **if** the landlord does not accomplish the repair within 15 days of the Decision date.

The balance of the claims on application **is dismissed, without leave to reapply**.

This Decision is final and binding on both parties.

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 08, 2014

Residential Tenancy Branch