



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenant requesting monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has the Landlord breached the Act, entitling the Tenant to monetary compensation?

Background and Evidence

This tenancy began on or about August 1, 2013, under an oral tenancy agreement. Oral tenancy agreements are recognized under the Act. The rental unit is a self-contained suite in the lower portion of the Landlord's residential property. The monthly rent was agreed upon at \$650.00 per month.

The Tenant testified that a couple of months after he moved into the rental unit, he was planning on cooking a meal for some guests. He discovered that the oven in the stove in the rental unit did not work. He reported this to the Landlord. The entire stove was replaced around the end of January 2014.

On Friday January 24, 2014, the Tenant encountered a problem with the electrical wiring in the rental unit. He testified that when he went to unplug a device a flame shot out of the power box about a foot high and sparks flew. The Tenant assumed that this must have tripped a breaker and attempted to remove another plug; however, the box sparked and a flame came out of it again. In evidence the Tenant has provided pictures of the burnt electrical outlet box. The Tenant testified he had his TV and related equipment plugged into this box.

The Tenant was very concerned that the electrical wiring was unsafe in the rental unit and turned off the breaker panel due to the flames and sparks.

The Tenant informed the Landlord of this problem and the Landlord had an electrician come out on Saturday January 25, 2014. According to the evidence of the Tenant he did not trust that the person hired by the Landlord was a professional electrician. He asked the Landlord and the electrician and they informed the Tenant that the electrician was licensed.

The Tenant was concerned about the electrician, as according to the Tenant, all the electrician did was put in a new receptacle box, replacing the one that had burnt up.

The Tenant also testified that when he had turned the power back on at the breaker, a space heater that he had plugged into the stove tripped off, and then the power to the whole kitchen failed. The Tenant testified that there was a wire sticking out of the wall behind the stove and when he pointed this out to the electrician, he simply put a cover plate over the box.

The Tenant alleged that the stove and baseboard heater in the rental unit were wired together. He alleges that this and other wiring has not been done correctly.

The Tenant became concerned with the safety of the wiring and called the local municipality. The municipality sent out an inspector and the inspector provided a report to the Tenant and the Landlord. A copy of the report was provided in evidence.

Among other problems noted at the rental unit, the inspector reported that the rental unit was an unauthorized secondary suite. The report notes that any wiring that has been installed without a permit is, "... not approved to be energized."

The report also sets out that the electrical work in the rental unit was done without a permit and not inspected, and therefore is not approved to be energized or concealed.

The report also sets out that there is concealed rough wiring, an electrical receptacle has reversed polarity, that non-compliant electrical receptacles have been installed within 1.5 meters of a basin, tub or shower in the washroom, and lighting equipment has been installed in damp and wet locations. There are several other deficiencies noted with the electrical wiring and these are described as being non-compliant with the applicable code.

In evidence the Tenant provided a letter from the Landlord dated February 3, 2014, which states in part:

“Sorry to say we have some problem in our basement suit, there is electrical wired not properly installed in our basement suit. I didn't know anything about that before because I bought this house three years ago, but now I found some problem in this suit so please I have request to you for empty this basement suit as soon as you can, sorry about if you have any trouble...”

[Reproduced as written.]

The Tenant was also concerned about the safety of the rental unit and he testified that he did not stay in the rental unit for more than two nights over the next month and he vacated the rental unit on March 1, 2014. After the Tenant moved out, the Landlord returned the security deposit to the Tenant.

The Tenant had a Witness appear who testified she was the sister of the Tenant. She testified that she was concerned about the safety of her brother with the faulty wiring in the rental unit. She testified that she would not allow her son, the nephew of the Tenant, to visit the rental unit anymore once she learned of the electrical issues from the Tenant.

The Witness alleged that all the problems started to show up after the stove was replaced in the rental unit. She testified that the Tenant told her the stove did not work and was replaced.

The Witness also testified that she was in attendance when the municipal inspector came to the rental unit. She testified she was there when the inspector told the Tenant and the Landlord that they should not use the electrical system in the rental unit.

The Witness testified that the Tenant had been living with her during the month of February 2014, except for a couple of nights.

The Landlord did not have any questions in cross examination of the Witness.

The Tenant claims against the Landlord for \$650.00 for the return of his last month of rent, for \$200.00 in moving expenses, for \$480.00 in lost wages and \$650.00 for compensation for physical and mental stress. However, the Tenant explained he only paid the Landlord \$547.98 for the last month of rent, as he deducted funds to replace the pots and pans he claims were in the stove when it was removed and replaced.

In reply, the Landlord testified that the Tenant did not complain about the stove until around Christmas time of 2013. She testified that a digital button was not working on the stove, but that the burner elements still worked. In evidence the Landlord produced a copy of a letter apparently from an appliance store which states they installed a \$150.00 rebuilt stove in the rental unit, on or about January 28, 2014. The writer of the letter states he did not see any pots or pans in the stove.

The Landlord testified at the hearing that the electrical problems in the rental unit were due to the Tenant overloading the wiring by plugging too many devices into the power box. The Landlord has provided a letter, apparently from the electrician who did the work there, in which the writer alleges the problems were because the plug was overloaded with, "... too many things."

The Landlord testified she and her son were afraid to enter their portion of the house as the Tenant had turned off the power to the whole building. It was dark and they did not want to enter the house.

The Landlord further testified that the Tenant saw the rental unit before he moved in and knew what it was like before he moved in, so he must have accepted the condition of the rental unit. She alleges the Tenant also had many heaters plugged in around the basement.

The Landlord testified that she bought the house out of a foreclosure sale and that the Tenant knew the house was old when he moved in.

The Landlord testified that she did not do the work in the basement and that the only thing she added was the stove and a baseboard heater.

The Landlord testified she agreed the Tenant could give her less money for the final month of rent to offset the pans he claimed were in there. She testified she did not want to start any problems with the Tenant as her husband was out of town.

The Landlord concluded by stating she was not going to rent the suite out again.

In reply to the Landlord, the Tenant testified he only ever had one heater and that it had been plugged into the stove, not the same plug as his TV and other equipment.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application acted reasonably to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant acted reasonably to minimize the damage or losses that were incurred.

Based on the above, the evidence and testimony, and on a balance of probabilities I find as follows.

I find the Tenant has proven that the Landlord breached section 32 of the *Act*, by failing to provide and maintain a rental unit in a state of repair that complies with the health, safety and housing standards required by law.

I find that the inspection conducted by the municipality is persuasive that the Landlord was renting a suite with electrical wiring that did not conform to the applicable codes, as described in the inspection report.

I further find the Landlord has provided contradictory evidence. In reading the letter from the Landlord to the Tenant dated February 3, 2014, the Landlord clearly was accepting the inspector's report and understood that the wiring was not properly installed in the basement. However, faced with the Tenant's monetary claim the

Landlord now alleges that it was the Tenant's fault for overloading an outlet. I find the Landlord has insufficient evidence to prove the Tenant was at fault in this matter.

I do not accept the letter from the alleged electrician supplied by the Landlord as evidence the Tenant did anything wrong, as I find the electrician has failed to prove he has the qualifications to assess any problems with the wiring. If the electrician had such qualifications, I find it is more likely that he would have seen the same or similar problems with the wiring that the inspector found.

I find the inspection report is substantive evidence that there was faulty electrical wiring in the rental unit, which was done without the required permits or necessary inspections. The inspector is an independent third party, whose only interest in this matter is to enforce the municipal bylaws in place. Therefore, I find that the probable cause of the problems is the faulty wiring and that the Landlord has insufficient evidence that any electrical problem in the rental unit was caused by the Tenant.

The argument of the Landlord that the Tenant "accepted" the rental unit is also not persuasive. In the first instance the Landlord and the Tenant cannot agree to avoid the requirements of section 32 of the Act. Secondly, the Tenant had no way of knowing about the faulty and illegal wiring by merely inspecting the rental unit, so he could not accept any of the hidden faults.

Finally, although the Landlord argued that she bought the rental unit and did not know about these issues once the problems arose she was obligated to make repairs as soon as possible. There is no evidence from the Landlord that she made any repairs to the problems that were set out in the municipal inspection. The Landlord is cautioned that should she want to rent out the suite in future that she must have all the issues in the municipal inspection report addressed, prior to renting again.

I also find the Tenant has shown the Landlord breached the Act by failing to give him a Notice to End Tenancy in the approved form. A tenancy may only end in accordance with the Act, and I find the Landlord did not meet her obligation to end this tenancy correctly.

Section 7 of the Act states:

- (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.

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

As for the Tenant's monetary claims, pursuant to sections 7 and 67 as set out above, I find the Landlord failed to provide the rental unit as required under section 32 and the Tenant has shown he was unable to safely use the rental unit for most of February 2014. Therefore, I find the Tenant is entitled to the return of the February rent, less the amount he deducted for pots and less two days for the days when he used the rental unit, in the amount of **\$508.83**. (\$547.98 divided by 28 days provides a daily rate of \$19.57, and the Tenant is awarded for 26 days [26 x \$19.57 = \$508.83])

I find the Tenant is entitled to the moving costs he incurred, as the Landlord should not have rented the suite out in the condition it was in. Therefore, I allow the **\$179.20** in moving costs he incurred, as set out in the invoice provided in evidence.

I further find that the Landlord did not provide a fully functioning stove to the Tenant and took too long to repair the stove once this was pointed out to the Landlord. I award the Tenant **\$50.00** for loss of use of the oven in the stove.

I find the Tenant took steps to minimize the losses claimed for and therefore has mitigated in accordance with the Act.

As to the Tenant's claims for \$480.00 in lost wages and \$650.00 for compensation for physical and mental stress, I find the Tenant provided insufficient evidence of these losses. In order to prove a wage loss the Tenant would have had to provide evidence of income and loss of pay, such as pay stubs and a letter from his employer, for example.

As to the physical and mental stress, I find the Tenant had insufficient evidence, such as a medical report or letter from his doctor. For these reasons, I dismiss both these claims without leave to reapply.

I find the Tenant has established a total monetary claim in the amount of **\$788.03**, comprised of loss of rent of \$508.83, \$179.20 in moving costs, \$50.00 for loss of use of the oven, and \$50.00 for the filing fee for the Application.

I grant the Tenant a monetary order in this amount, which must be served on the Landlord and may be enforced in the Provincial Court Small Claims division.

Conclusion

I find the Tenant has proven that the Landlord breached the Act and that he suffered some proven losses. I award the Tenant a monetary order against the Landlord in the amount of \$788.03.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 2, 2014

Residential Tenancy Branch

