



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR; MNDC; MNSD; OLC; ERP; PSF; RP; RR; FF

Introduction

This is the Tenants' application for a Monetary Order for the cost of emergency repairs; for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord make regular and emergency repairs to the rental unit; an Order that the Landlord provide services or facilities required by law; return of the security deposit; a rent reduction; and to recover the cost of the filing fee from the Landlord.

The Tenant HS gave affirmed testimony at the Hearing.

HS testified that she served the Landlord with the Notice of Hearing documents and copies of the Tenants' documentary evidence, by registered mail sent on June 2, 2015. The Tenants provided the receipt and tracking numbers in evidence. A search of the Canada Post tracking system confirms that the Landlord picked up and signed for the registered documents on June 18, 2015.

Based on the evidence provided, I am satisfied that the Landlord was duly served with the Notice of Hearing documents. Despite being served, the Landlord did not sign into the teleconference which remained open for 40 minutes. The Hearing continued in his absence.

Issues to be Decided

- Are the Tenants entitled to a monetary award, rent reduction and the repair Orders requested?

Background and Evidence

The Tenant HS gave the following testimony:

HS testified that this tenancy began in May, 2014. She stated that the parties signed a tenancy agreement, but the Landlord has not provided the Tenants with a copy. HS testified that monthly rent is \$800.00, due on the first day of each month and that the Tenants paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

HS testified that the rental property was in need of repairs and that the Landlord asked the male Tenant to do some work on the rental unit and the rental property. The Landlord paid for all of the materials and told the Tenants that they would be reimbursed for their labour. She stated that the Landlord did not agree that the compensation could be deducted from rent. HS stated that the Landlord has not paid any compensation for the male Tenant's labour and that some of the work was for emergency repairs to the roof, electrical and septic systems.

HS testified that shortly after moving into the rental unit, the Tenants noticed "pooling" in the yard even though there had been no rain. She stated that in August, 2014, the Tenants smelled sewage on the property and in the rental unit. The male Tenant dug up the septic tank so that it could be repaired, but the professional septic engineer ("Chris") who came in October, 2014, to pump out the tank told the Landlord and the Tenants that it was no use pumping out the tank because it had been crushed by the Landlord's heavy equipment, which was used in the orchard adjacent to the rental property. Chris stated that the whole septic field would have to be replaced before the tank could be replaced. HS testified that the Landlord declined to have the work done and that the Landlord left the country shortly afterwards and did not return until February, 2015.

HS testified that Chris returned in February, 2015, and gave the Landlord a discounted quote to repair the septic system, but the Landlord refuses to do the repairs. HS testified that she is sick from the fumes and that her two teenagers have been staying with friends for the last few weeks because of the smell.

HS testified that there is insufficient or no heat in the rental unit because the gas meter has been removed and the secondary heat source (a small wood burning stove) only provides enough heat for the living room and kitchen. She stated that the gas provider advised her that the gas meter was removed because the heating system was not inspected properly. She was also advised that the lines and gas appliances had to be inspected by a certified gas fitter before gas could be provided and the meter reconnected. HS testified that the Landlord promised to have the heating system up and running before October, 2014, but he left the country before anything was done. HS stated that the Tenants only had the wood stove as a heat source for the winter months and that sometimes it was -25C outside. As of the date of the Hearing, the gas has not been restored to the rental unit.

HS stated that the male Tenant made emergency repairs to the electrical wiring in the rental unit, including replacing two breakers that were smoking; rewiring 6 plugs that were sparking and smoking; and removing and rewiring a ceiling fan that was sparking and smoking. She stated that the male Tenant also made emergency repairs to the roof because water was leaking into the bathroom through the ceiling and also leaking into the electrical hydro meter.

HS testified that the male Tenant also replaced the leaking wood stove chimney pipe; rebuilt the deck; and worked in the Landlord's orchard cutting grape vines and planting

trees. HS stated that there are more repairs required to the deck, including repairing the railings and steps leading up to the deck.

SH stated that the Landlord's father removed the Tenants' large camping tent from the Tenants' carport and used it to wrap up an outdoor water faucet for the winter. She stated that the Tenants discovered this when they went to turn on the water in the spring.

The Tenants provided photographs of the rental unit and the rental property in evidence.

The Tenants seek monetary compensation for their labour, calculated as follows:

Description	Cost
New roof (December, 2014) 43 hours @ \$25.00	\$1,075.00
Deck rebuild (August, 2014) 50 hours @ \$25.00	\$1,250.00
Digging up septic tank (October, 2014) 4 hours @ \$25.00	\$100.00
Replace stove pipe (October, 2014) 4 hours @ \$25.00	\$100.00
Emergency electrical repairs (7 hours @ \$25.00)	\$175.00
Orchard work (10.5 hours @ \$25.00)	\$262.50
Replace ruined tent	\$144.00
TOTAL CLAIM	\$3,106.50

HS testified that the Tenants have been looking for alternate accommodation, but that rental properties are scarce where they live and that her job requires her to do shift work, so she needs to be close to her place of business.

The Tenants also seek rent abatement because they have not had use of the rental property because of the septic failure and only had use of the kitchen and living room for six months during the winter because the remainder of the house was so cold.

Analysis

I accept the Tenant HS's undisputed affirmed testimony in its entirety. Her oral testimony and documentary evidence was not contradictory. Her oral testimony was direct and without equivocation.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 13(3) of the Act requires a landlord to provide a tenant with a copy of the tenancy agreement within 21 days of signing the agreement.

Section 27 of the Act provides that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit. I find that heat and waste disposal are essential services and that the Landlord has not complied with Section 27 of the Act.

Section 32 of the Act requires a Landlord to provide and maintain residential property in a state of repair that complies with the health, safety and housing standards required by law. I find that the Landlord did not comply with Section 32 of the Act and that the Tenants have suffered a loss as a result of the Landlord's non-compliance.

Section 33 of the Act provides:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the Landlord did not comply with Sections 13(2), 27, 32 and 33(2) of the Act.

Are the Tenants entitled to return of the security deposit?

Security deposits must be administered in accordance with the provisions of the Act at the end of the tenancy.

There is no provision in the Act for return of a security deposit to the Tenants in these circumstances. This portion of the Tenants' claim is dismissed.

Are the Tenants entitled to an Order that the Landlord comply with Sections 13(2), 27, 32 and 33(2) of the Act?

Having found that the Landlord has failed to comply with Sections 27 and 32 of the Act, I Order the Landlord to do the following:

- Comply with directions of a professional septic engineer and repair and/or replace the septic system at the rental property.
- Hire a professional gas fitter to inspect the gas line and gas appliances and make necessary repairs. After the repairs are complete, to have the gas fitter reconnect the gas line and meter.
- Ensure that the gas heat is restored to the rental unit.
- Complete the repairs to the deck's railings and stairs.

I Order that all of the above steps be completed no later than October 1, 2015.

I Order that the Landlord comply with Section 33(2) of the Act immediately and provide the Tenants with the name and telephone number of a person the Tenants are to contact for emergency repairs.

I Order that the Landlord provide the Tenants with a copy of the tenancy agreement immediately.

Are the Tenants entitled to a rent reduction and if so, in what amount?

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. The Tenants provided evidence that the rental unit has not been maintained by the Landlord and that there have been problems with the roof leaking and the failure of the septic system and heating system since the beginning of the tenancy.

Of most concern is the septic system. I find that the Tenants provided sufficient evidence that the septic system has not been working properly since the beginning of the tenancy. Pursuant to the provisions of Sections 65 and 67 of the Act, I find that the Tenants are entitled to a rent abatement of 30% effective May 1, 2014 to June 1, 2015, and a rent reduction of 30% commencing July 1, 2015, until all of the repairs and maintenance orders set out above are completed **and the Landlord is successful in an application to have the rent reduction stopped. For clarity, the onus will be on the Landlord to prove that the repairs have been completed as ordered before the rent reduction is ended.**

I find that the Tenants had insufficient heat for 6 months during the winter (October, 2014 to March, 2015) and that their tenancy was further devalued as a result. I allow additional rent abatement in the amount of 25% for that 6 month period.

Therefore, I calculate the total rent payable for May 1, 2014 to June 1, 2015, as follows:

May, 2014, to September, 2014 = 5 months x (\$800.00 x 70%) =	\$2,800.00
October, 2014 to March, 2015 = 6 months x (\$800.00 x 45%) =	\$2,160.00
April, 2015 to June, 2015 = 3 months x (\$800.00 x 70%) =	<u>\$1,680.00</u>
TOTAL after abatement	\$6,640.00

The Tenants have paid \$11,200.00 for May, 2014 to June, 2015, and therefore I find that they are entitled to compensation in the amount of **\$4,560.00**. (\$11,200.00 - \$6,640.00).

Furthermore, I Order that rent is reduced to \$560.00 commencing July 1, 2015, until the Landlord is successful in an application to have the rent reduction stopped.

Are the Tenants entitled to compensation for repairs completed by the male Tenant and replacement cost for the tent?

The bulk of the regular or emergency repairs were done by the Tenant while the Landlord was still in the country and under the parties' oral employment contract. However, I find that the emergency repairs to the leaky roof falls under the provisions of Section 33 of the Act. The Tenants provided a photograph of the water damage to the ceiling and evidence of water leaking on to an electrical box. I accept the Tenant HS's testimony that the Landlord was out of the country between October, 2014, and February, 2015, and that he did not provide the Tenants with an agent's contact information for emergency repairs. I find that the amount claimed by the Tenants is a reasonable amount and allow this portion of their claim in the amount of **\$1,075.00**.

The dispute resolution process resolves issues arising from tenancy agreements. The parties did not agree that the Tenants could deduct their labour from rent and therefore I find that the parties had a separate oral employment contract with respect to the other repairs at the rental property. I find that the Act has no jurisdiction over employment contracts. Likewise, I find that the damage to the Tenants' tent is not within the jurisdiction of the Act.

Total monetary award for the Tenants

The Tenants have been successful in their application, and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord. Therefore, together with the monetary award set out above, the Tenants are provided with a Monetary Order in the total amount of **\$5,685.00**.

HS stated that the Tenants are actively looking for alternate accommodation. The Tenants can choose to enforce the enclosed Monetary Order through the Small Claims Court (if necessary), **or** through reducing this amount from future rent payments.

Conclusion

The Tenants' application for return of the security deposit is dismissed.

Effective July 1, 2015, monthly rent will be **\$560.00**. Rent will remain at \$560.00 per month until the Landlord complies with the following repair orders:

I Order the Landlord to do the following before October 15, 2015:

- Comply with directions of a professional septic engineer and repair and/or replace the septic system at the rental property.
- Hire a professional gas fitter to inspect the gas line and gas appliances and make necessary repairs. After the repairs are complete, to have the gas fitter reconnect the gas line and meter.
- Ensure that the gas heat is restored to the rental unit.
- Complete the repairs to the deck's railings and stairs.

The rent will remain at the reduced amount of \$560.00 per month until the Landlord is successful in an application to have the rent restored, when the above repairs are completed.

I Order the Landlord to immediately provide the Tenants with the name and telephone number of a person the Tenants are to contact for emergency repairs.

I Order that the Landlord provide the Tenants with a copy of the tenancy agreement immediately.

I hereby provide the Tenants with a Monetary Order in the amount of **\$5,685.00**, which includes rent abatement to June 1, 2015, compensation for the male Tenant's emergency repairs and recovery of the filing fee. The Tenants may serve the Landlord with this Order and file the Order in Small Claims Court for enforcement **or** may deduct their monetary award from future rent due to the Landlord.

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: June 25, 2015

Residential Tenancy Branch

