



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RP, RR

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to make repairs to the rental unit and allowing the tenant to reduce the rent for repairs, services and facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

The landlord acknowledged receipt of the evidence package from the tenant that accompanied the Application for Dispute Resolution and Notice of Hearing.

The landlord filed a three page submission which included some colour photographs. He testified that he went to the rental unit and knocked on the door. When the tenant did not immediately answer he put the documents in a basket beside the door. Before he left the tenant opened the door, looked at him, picked up the papers and shut the door. These documents were filed with the Residential Tenancy Branch on May 22.

The tenant denied receiving these documents. He said the landlord should have served them by registered mail or with a witness.

On May 28 the tenant sent a second evidence package to the landlord by registered mail. The records of Canada Post show that the item had not been picked up by the date of the hearing. Although the document is not titled a response to the landlord's submission it appears to address many of the same issues raised by the landlord. The written submission was faxed to the Residential Tenancy Branch on May 28 and the photographs were sent by mail.

Section 90 of the *Residential Tenancy Act* provides that documents sent by mail are deemed delivered on the fifth day after they are mailed. Accordingly, they are deemed delivered on June 2.

Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure* provide that all documentary and digital evidence that was not submitted at the time the application is filed must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. All of the evidence included in the second submission was available when the application for dispute resolution was filed, even if the tenant did not obtain it until later.

The only evidence regarding service of the landlord's evidence on the tenant is the conflicting oral testimony of the parties. There is nothing to tip the balance of probabilities in the landlord's favour so that written evidence is excluded.

The tenant's second evidence package was served too late and it is also excluded.

Issue(s) to be Decided

- Should a rent reduction be awarded to the tenant and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?

Background and Evidence

The Rental Unit

This tenancy commenced May 1, 2014 as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of \$875.00 includes electricity and is due on the first day of the month. The tenant paid a security deposit of \$447.50.

The rental unit is one bedroom suite, located in the walk-out basement of a house. The upstairs levels are rented to another tenant on a different tenancy agreement. The house is located in a rural area and is only a few years old. The landlord lives in a house on the same property. According to the landlord the houses are only a few hundred meters apart.

The tenant has given notice to end tenancy effective June 30, 2015. The rent has been paid to the end of June.

Mice

The tenant testified that when he first moved in the upstairs tenant told him that they had mice. For the first six months of his tenancy he did not notice the presence of mice. However, this changed when the weather changed in November. He can hear mice in the ceiling and in the walls of his unit. He has never observed a mouse anywhere in his unit including the pantry or cupboards. The tenant testified that he keeps his unit scrubbed and disinfected.

The tenant notified the landlord about the mice in November. The landlord set out traps and poison and has taken some steps to seal possible entry points for the mice but these measures have not reduced the mouse population.

The landlord testified that they have had mouse problems in the past. The previous tenant was often away for weeks at a time and was careless with food so mice were attracted to the unit. For the past two years he has placed mouse traps and poison around the exterior of the unit. He has tried the electronic repellers but found them to be ineffective. He spoke to a pest control company and obtained some advice but did not have them come to the rental unit. He testified that he only received occasional reports from the tenant and has heard nothing from the upstairs tenants on the topic for a year.

The tenant submitted some information about Hantavirus. This information explains that Hantavirus is carried by rodents, especially deer mice, and is found in their urine and feces. It is believed that humans can get sick with the virus if they come in contact with contaminated dust from mice nests or droppings. Hantavirus is very serious and may lead to death.

The information sheet includes recommended practises for people who must work in an area where rodent urine or feces are possible. These are primarily the procedures to follow in order to properly disinfect the area.

The tenant testified that he can hear the mice all the time but it is particularly stressful at night because he can hear them in the wall next to his bed. As a result he has been sleeping on his couch and generally, not sleeping very well.

The tenant testified that he has multiple health issues. He lost all of his fingers and most of his palms to frost bite. He has Type 2 diabetes and suffers from PDN – a type of neuralgia that is an aftereffect of shingles. The tenant testified that the pain of shingles is nothing compared to the pain of PDN. He said that things had been good for two years but the stress of the current situation has brought it back. He has had to increase the pain killers, muscle relaxants and other medications he takes to cope with the PDN.

The tenant also testified that because of his health problems he is very concerned about Hantavirus and this fear is what has led him to give notice to end tenancy.

He wants compensation for the pain he is suffering as well as compensation for liver damage that will result from the stronger medication.

Heating

The rental unit is equipped with radiant in-floor heating as well as a wood heater. The hydro is included in the rent so there is no additional cost to the tenant if he uses the in-floor heating. The upstairs tenants pay a portion of the hydro bill for the house. The tenant likes his neighbours and did not want to do anything that would increase their cost of living so he never used the in-floor heating, instead relying upon the wood heater.

Part of the tenancy agreement was that the landlord would supply the firewood. The tenant says that he ran out of wood in February, when the landlord was away for four weeks, and part of the reason was that he gave some of his wood to the upstairs tenants. He also got some wood from his sister in February. The tenant testified that he kept asking the landlord for firewood in March and April but the landlord just told him to turn on the in-floor heating.

The landlord testified that the tenant used much more firewood than expected; probably because he is home all day. The landlord also testified that the tenant had firewood until mid-

April and that it was delivered weekly. In addition, he told the tenant to help himself from their wood pile if he ran out and they were away. However, by mid-April they were out of wood.

In response, the tenant said he had to go to the landlord's house to pick up wood for one and a half months.

The tenant testified that on the weekend of April 18 the landlord was away. He understood that the landlord gave the upstairs tenants an emergency contact number in case anything arose during the landlord's absence.

On Saturday April 18 he told the upstairs tenants that there was a problem with the hot water heater. It was not until the Tuesday that the water heater completely failed and the upstairs tenants called the emergency contact. The hot water heater was fixed on Tuesday afternoon.

In the meantime the tenant thought the controls for the in-floor heating were connected to the hot water heater and that, as a result, the in-floor heating would not be working either. After two days he realized he was wrong and turned on the in-floor heating. He says it took two days before his unit warmed up and he wants compensation for those two days.

The landlord said the unit usually warms up in half a day.

Lock

The tenant testified that for three months the lock on the door did not work properly. To shut the door you had to pull the door with one hand and use the other hand to turn the lock. Because of his difficulty, this was very difficult for him.

Both parties testified that the tenant first raised the issue with the landlord in March. The landlord testified that he did not understand the full extent of the problem at first so did not treat the complaint as a serious issue. It was only after the tenant explained why it was so difficult for him that he attended to it. He tried to fix it himself and when he had no success, he called a locksmith. The lock was fixed on May 16.

Analysis

Applicable Law

Any repair order made will effectively end when this tenancy ends. As this tenancy is ending on June 30 no repair order will be made.

Section 32(1) of the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- complies with the health, safety and housing standards required by law; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Mice

I find that the landlord has underestimated the extent of his rodent problem and overestimated the effectiveness of his home-made remedies. He should have had a professional pest control company inspect the property, received their recommendations specific to this property, and implemented them. An example of the difference between a professional and an untrained individual is that the certified pest control technician would have realized that the carport was a potential point of entry. I find that the landlord did not live up to his responsibilities when the mouse issue was reported to him.

The tenant's evidence does not establish that he has been exposed to the Hantavirus. The information he filed is that the risk comes from being exposed to mouse urine and feces and his evidence is that there has been no sign of the mice actually inside his unit.

The sound of the mice in the walls and ceiling and the concern that this caused the tenant would be stressful and has reduced the value of his tenancy. I find that the value of the tenancy was reduced by 5% for December, January, February, March, April, May and June and I award the tenant \$ 313.25 for this item.

Although the tenant's evidence is that the symptoms of his PDN have increased the evidence does not establish that stress is the only reason for the reoccurrence of symptoms, or that the situation in the rental unit is the sole cause of his drug expenses, or that the drugs he is taking will cause damage to his liver. Accordingly, no compensation will be ordered for the tenant's medical issues.

Heat

The tenant always had an alternate heat source available to him at no additional cost to him. It was his choice not to use it. No award will be made for any interruption in firewood delivery or for the lack of heat on the weekend of April 18.

Lock

The landlord's own evidence is that he did not take the tenant's complaint as seriously as he should when he first received it. Because of his disability the impact on the tenant was more serious than it would have been to an able bodied person. I find that the value of the tenancy was reduced by 3% for three months and I award the tenant \$80.55 for this item.

Conclusion

I find that the tenant has established a total monetary claim of **\$393.80** as calculated above and I grant the tenant a monetary order in this amount. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 19, 2015

Residential Tenancy Branch

