



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR CNR RR ERP RR MNDC MNSD FF

Introduction:

Both parties made applications. They confirmed receipt of each other's documents. The Notice to End Tenancy was dated September 3, 2015 to be effective September 14, 2015. The hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent and revenue loss;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee of \$100 pursuant to Section 72.

The hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) An Order that the landlord do emergency and other repairs to the property pursuant to sections 32 and 33;
- g) An Order that the landlord provide facilities required by their tenancy agreement or the Act;
- h) A monetary order or rent rebate as compensation for their losses due to repairs not done to the property; and
- i) To recover the filing fee of \$50 for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to relief? Has the tenant proved on a balance of probabilities that the property needs repairs and the landlord has neglected to do them? If so, have they been proved they are entitled to compensation for losses suffered due to lack of repair and denial of facilities and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the landlord purchased the home in April 2015 and the tenancy commenced May 1, 2015 on a fixed term to April 30, 2016. Rent is \$2380 a month and a security deposit of \$1190 was paid. It is undisputed that the tenant has not paid rent for September, October or November 2015 (total of \$7140) but they made an Application on September 4, 2015 to request compensation for damages suffered due to emergency repairs and other repairs not done and to cancel the Notice to End Tenancy for unpaid rent. They also requested orders that the repairs be done. In the hearing, they said they have arranged to vacate this month and said an Order of Possession for November 30, 2015 would suit them.

The tenants said the landlord had had limited opportunity to inspect the property before they moved in and they never did a Condition Inspection Report although they requested this. They said they noticed a mouldy smell in the house immediately at move-in and told the landlord of mould around the windows. There were also blocked gutters and broken pipes and there was no professional hired to take care of these items. They said there were some repairs made by the landlord in September 2015 but mould had destroyed items of furniture. They said they saw water pooling on the window sills, water (clarified as moisture laden air) was coming through the vents, the heat would not come on. When they told the landlord, they came and found the problem was broken pipes in the basement crawl space. They said they gave a list of problems to the landlord in August but they did not keep a copy; they also texted her. The tenant's mother and co-tenant said a list was given to the landlord well before September. She remembers talking about the water pooling on the windows early in the tenancy and the landlord made a list of problems including the garburator and electricity.

The landlord agrees the home has problems but said they were not told until September 3, 2015 when they gave the Notice to End Tenancy for unpaid rent. They said the tenant gave 3 post dated cheques for rent at the beginning, then another 2 in late August but the water problems were not mentioned in August. They said the tenants initially said the windows were leaking on September 3, 2015 but her husband consulted a professional who told him that this could not be the problem so he went into the crawl space and found a leaking hot water pipe and fixed it on September 4, 2015. They said they are conscientious landlords who try to look after their tenants. The tenant agrees that they are conscientious but said they had bought a house with lots of problems and did not hire professionals to discover and fix the problems. They said the

furnace is still not fixed but note they are moving and it should be fixed for another tenant.

The tenant claims as follows:

1. \$1567: to replace mattresses destroyed by mould. They were wet and smelly and had to be discarded. The invoice is an estimate and there are no photographs or invoices for original mattresses.
2. \$210 for painting destroyed by mould (5 years old –no invoice)
3. \$150 for food spoiled by damp in the cupboard
4. \$100 for extra cost of hydro due to daily washing required for damp clothes and bedding
5. \$40 for cleaning products to clean off mould
6. \$1200 for moving expenses using a truck and two men. Verbal quote and same as one to move into the house.

In evidence is the Notice to End Tenancy for unpaid rent, statements of the parties, an estimated invoice for mattresses and other items, many photographs showing black dots that look like mould. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

All evidence of the parties was considered although not all is quoted in the Decision. Section 26 of the Act provides that a tenant must pay rent when due whether or not the landlord fulfills their obligations under the Act. I find the tenants did not pay rent for September, October and November 2015 so the landlord is entitled to an Order of Possession pursuant to sections 46 and 55 of the Act. I find the landlord entitled to an Order of Possession effective November 30, 2015 as agreed in the hearing as the tenants have arranged to vacate in November. Furthermore, I find the landlord entitled to a monetary order for unpaid rent for three months and to retain the security deposit to offset the amount owing.

As explained to the parties in the hearing, the onus is on the applicant to prove on a balance of probabilities their claim. 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 did whatever was reasonable to minimize the damage or loss.

In accordance with section 7 and 67 of the Act, a recent court decision emphasized that the arbitrator is authorized to order compensation for damage or loss under section 67 of the Act if the damage or loss is the result of the respondent's non compliance with the Act, the regulations or a tenancy agreement. I find the weight of the evidence is that the landlord did not know of the significant moisture problems in this home until September 3, 2015 when the tenants complained of the 'leaking windows'. Although the tenants allege they reported it earlier, I find insufficient evidence to support their allegations as they were unable to provide any written notification. Also, the tenants said they were unable to get the heat turned on and when they told the landlord, they found the problem of the pipes in the basement crawl space and this likely did not occur until September. Furthermore, I find the landlord immediately began to address the problem on September 4, 2015 which supports the landlord's evidence that they did not find out until September 3, 2015. I find the landlord bought the property in April 2015 and there is insufficient evidence that they did not maintain it in a state of decoration and repair to comply with housing standards and make it suitable for occupation by the tenants. I find the landlord made some repairs (as the tenants testified) and wanted to take care of their property. As the weight of the evidence is that the leaking and moisture problem was not caused by an act of neglect of the landlord and they acted promptly to repair the problem, I find the tenants not entitled to compensation for losses as a result of this problem up until September 3, 2015 when they informed the landlord.

However, I find the fixing of the leaking pipes was insufficient to address the build up of moisture and mould in the home which possibly would have required drying out and cleaning. The furnace is still not repaired and the tenants have had no heat to assist them in the cold and damp home and this has added to the problems. I find the neglect of the landlord to further address these issues have caused some loss to the tenants as illustrated in the photographs. I find the tenants entitled to a rent rebate of \$300 a month for 3 months (September to November 2015) for lack of heat due to the landlord's failure to repair the furnace (total \$900). Because of the home conditions and weather, I find heat would have been necessary from September 2015 to make the home habitable.

However, I find insufficient evidence to support compensation for mattresses. Although the tenants provided lots of photographs of the walls, windows and floors showing mould buildup, there were none of the mattresses. There was also no receipt showing original cost of mattresses and date of purchase. I dismiss this portion of the tenant's claim without leave to reapply.

Although they were unable to provide an invoice for the art work as it is 5 years old, I find some evidence in the photographs to support the destruction of the art work so I find the tenant entitled to recover \$210 for this limited edition print destroyed by mould. I find the continued dampness after the fixing of the pipes likely contributed to this destruction. I find insufficient evidence to support the tenant's claim for dry food, extra hydro and for cleaning costs as no invoices to prove the cost were provided. These costs were recent so I find the invoices should have been readily available. I dismiss this portion of their claim without leave to reapply.

In respect to moving costs, I find the tenancy ended based on a 10 day Notice because the tenants refused to pay rent in contravention of section 26 of the Act. Therefore, I find they had to move due to their violation of the Act and not due to act or neglect of the landlord. Therefore, I dismiss their claim for moving expenses without leave to reapply.

Conclusion:

I find the landlord entitled to an Order of Possession effective November 30, 2015 and a monetary order as calculated below. I find the landlord entitled to retain the security deposit to offset the amount owing and to recover the \$100 filing fee for this application.

find the tenant entitled to compensation as calculated below. The compensation will be offset against the amount owing to the landlord. I find the tenant also entitled to recover the \$50 filing fee as their application had some merit.

Calculation of Monetary Award:

Rent arrears and loss	7140.00
Filing fee	100.00
Less compensation to tenant for lack of heat	-900.00
Less compensation to tenant for art work	-210.00
Less filing fee to tenant	-50.00
Less security deposit (no interest)	-1190.00
Total Monetary Order to landlord	4890.00

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: November 10, 2015

Residential Tenancy Branch

