



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, ERP, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for orders reimbursing her for the cost of emergency repairs, compelling the landlord to make repairs to the rental unit, and allowing the tenant to reduce the rent for services, repairs or facilities agreed upon but not provided.

The hearing commenced October 2, 2015. The parties did not complete their testimony within the time allotted for the hearing and the hearing was continued to October 15, 2015 at 1:00 pm, a date and time convenient to all.

The tenant filed two evidence packages before the hearing. The landlord acknowledged receipt of one package. She also acknowledged that the tenant had attempted to give her a second evidence package personally but she had refused to accept it. The tenant had complied with the Rules of Procedure so I admitted the second package into evidence.

After the first date set for the hearing the tenant submitted two additional evidence packages and the landlord submitted an evidence package. Both parties acknowledged receipt of the other's evidence and indicated they were ready to proceed. Based on those representations I accepted all of that material as evidence.

Issue(s) to be Decided

- Should a monetary order be made in favour of the tenant and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should the rent be reduced and, if so, in what amount?

Background and Evidence

The rental unit is a three story home. The tenant thought the house was one hundred years old; the landlord said it was about fifty years old. There are a kitchen, living room, dining room, two bedrooms and a bathroom on the main level; two bedrooms and a bathroom on the top level; and two bedrooms, bathroom and kitchen area in the basement. The house sits on more than an acre of land and is connected to a septic system.

The tenancy commenced about three years ago. The monthly rent has been \$1650.00 throughout the tenancy. The landlord referred to a written tenancy agreement but a copy was not filed in evidence.

The parties disagreed on the exact nature of the unit rented to the tenant. The landlord said the rent is only for the top two levels. The tenants were told they could use the basement for storage but it was not rented as living accommodation. The tenant said that when they rented this property they were told that the rent for the top two levels only was \$1050.00; if they rented the entire house the rent would be \$1650.00.

The tenant is 62 years old and suffers from COPD and arthritis. She said that she is a heavy woman (over 250 pounds) and her mobility is limited by her weight and her health issues.

One of the reasons the tenant rented this home and why she continues to live here is that she has a large dog.

In the past her daughter and a nephew lived in the house with her but they no longer do. Her son has always lived in the house and he lives on the top level. About two years ago a gentleman friend moved into the house. Both the landlord and the tenant say that she is the only person listed on the tenancy agreement as the tenant.

The tenant, her roommate and many of the people who filed written letters on behalf of the tenancy gave evidence about previous problems with the rental unit but this is the first time the tenant has filed an application for dispute resolution with the Residential Tenancy Branch. Some of this evidence was that repairs of previous issues had been made but never as quickly or as professionally as the tenant would have liked. After she filed the application she also complained to the local municipality for the first time.

The issue that precipitated this application was the window of the main floor bathroom. The bathroom has a combination tub/shower. Above the bathtub was a window that slides up from the bottom. The walls of the shower area and the window sill are

covered with the sheeting that is used as a tub surround. The landlord testified that this material has been in place since she bought the house in 1997.

The tenant's evidence is that the window never properly closed and for most of the tenancy it just hung in place. The landlord testified that the problem was the hinge. They fixed it twice and they felt that any continuing problem must be the result of something the occupants were doing.

On or about September 1, as the tenant was having a shower she dropped the shampoo on the window sill and the window fell out. She called the landlord, who came the next day. The landlord agreed to fix the window but the repair did not start until September 27.

The tenant's roommate did a temporary fix of the window. Both the tenant and the roommate testified that the landlord said she would pay for the interim repair. The landlord testified that she told them they could go ahead with the repair but she did not offer to pay anything. The tenant filed invoices in the amount of \$37.93 for a piece of lumber, bug killer and other supplies. The roommate submitted an invoice for unspecified materials in the amount of \$40.00 and \$150.00 for two days labour.

The tenant testified that when the window came out they could see into the wall and it was rotten and mouldy. She testified that the wind blew the mould into the rest of the house and this caused health problems for all three occupants. The landlord argued that they could have sealed off the bathroom if they were concerned about mould.

The tenant testified that she could not climb the stairs to the upper level to use that bathroom so was forced to use the main floor bathroom until they moved out.

The repair to the bathroom window started September 27. The landlord testified that they dealt with the exterior repair first. Three or four days later they returned and completed the interior repairs.

The tenant is very unhappy with the repair work. She and her roommate both testified that the landlord did not clean out all the rotted material before installing the window; they just put the new tub surround over the old tub surround; they installed the new tub surround with ordinary screws not concrete screws; and that after the repair was completed there is a gap between the tub surround and the wall which is admitting cold air and mould. They also complained that the workmen were very messy, did not clean up the debris, and the grouting was very rough and unworkmanlike.

On the other hand the landlord's evidence is that they removed the exterior siding from around the window area, removed the old window, removed and disposed of any rotten or mouldy wood, installed new insulation in any and all open wall areas, covered the exterior with new siding paper and new plywood, and then installed the new window. The landlord's evidence was also that they ripped out any rotten mould from inside the bathroom and disposed of that material; installed a new tub surround; and finally, caulked everything.

The tenant testified that the window was installed upside down.

When questioned, the landlord testified that the old tub liner was removed before the new tub liner was installed.

The landlord also testified that they did not find any mould when the old tub surround was removed.

The parties gave some evidence about whether the front and back decks need repair. The tenant testified that the landlord had done minimal repairs in the past and that the decks were not safe for them to use. The landlord testified that they had repaired the decks to the best of their ability. Neither party filed any other evidence in support of their position.

There was a similar level of evidence on the question of whether a repair to the septic tank had been properly finished out, the eaves troughs properly cleaned, or the roof properly repaired.

The roommate also submitted an invoice in the amount of \$75.00 for repairs to the fireplace fan. He said he fixed it with the prior approval of the landlord and she agreed to pay him for the work. The landlord said the tenancy agreement required the tenant to obtain approval in writing before doing any repairs. She did not authorize this repair and did not agree to pay for it.

Analysis

On any application the onus is on the applicant to establish their claim on a balance of probabilities.

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.

The test is not whether the repair was done as well as it could be or even to the standard of a reasonable consumer; it is only whether it is to the standard of suitability for occupancy. The tenant's close-up photographs of the interior of the bathroom show rough workmanship but they do not establish that the end result is unsuitable for occupancy.

Both the tenant's roommate and the landlord have some experience with construction but neither presented any credentials such as an actual ticket in a trade. Both parties filed photographs – of varying degrees of clarity and of various stages of repairs – and both offered their opinion on the quality of the repairs. However, on the material before me it is not possible to determine whether the repair is adequate or not and there is no evidence from a qualified third party to tip the balance of probabilities in the tenants' favour. Accordingly, no order for additional repairs to the bathroom or the bathroom window will be made at this time.

However, s. 32(1)(a) requires a landlord to maintain a property so that it complies with the health, safety and housing standards required by law. If at any time the tenant is able to provide evidence that the bathroom repair does not meet the legal requirements she may apply again for a repair order regarding the bathroom.

The tenant's claim for a rent reduction is a claim in contract by the tenant against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

"Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

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.

The bathroom was not usable in the ordinary manner for a month. There is no evidence to establish that the problem was caused by the tenant or anyone she permits to live in the rental unit. As is clear from the above quote, the negligence or lack of negligence by the landlord is largely irrelevant in the calculation of the rent reduction to be awarded to a tenant in this situation.

Ordinarily I would have held that the tenant was entitled to a lesser award because there is a second bathroom in the house. However, I accept the tenant's evidence that the upstairs bathroom was not an option for her because of her size and illness. I find that the loss of a fully operational bathroom for one month represented a reduction in value of the tenancy of 25% and I award the tenant damages in the amount of \$400.00.

Although broken or missing windows are not listed as an "emergency repair" in section 33 it is to the landlord's benefit, as well as the tenant's, to have the elements kept out of the rental unit. Clearly the landlord relied on the tenant to close up the wall before the window was replaced or she would not have waited for almost a month before coming back to repair it. I accept the tenant's evidence that the landlord agreed to pay for this work and I award the tenant \$190.00 for this item. It is not possible to tell from the documentation whether the \$40.00 claimed by the roommate is for the almost \$40.00 worth of materials bought from the lumber yard so I am not awarding reimbursement of the lumber yard invoices.

With regard to the claim for repairs to the fireplace the only evidence is the contradictory oral testimony of the landlord and the tenant and her roommate. There is no evidence that tips the balance of probabilities in favour of the tenant so this claim is dismissed.

In her application for dispute resolution and evidence the tenant expressed concern about the state of the wiring in the rental unit. By the date of the continuation the tenant had complained to the local municipality and they were going to be inspecting the unit in the near future. As this matter is being investigated by the proper authorities, no order will be made at this time. However, if the investigation finds deficiencies, the landlord is ordered to make certain repairs and the landlord fails to do so, the tenant may apply to the Residential Tenancy Branch for a repair order and/or an order reducing the rent.

Although the condition of the front and back steps, the manhole for the septic tank, the roof and the eaves troughs were brought up the tenant did not really present much evidence on any of these issues. Accordingly, all of these claims are dismissed with leave to re-apply if necessary.

As explained in the hearing and in the Interim Decision this application was for repairs and a rent reduction only so no decision is made on any expenses claimed by the

tenant as a result of moving out of the rental unit for a period of time. The tenant must file a separate application for those claims.

The tenant filed the invoices for photographs. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence.

Finally, as the tenant was partially successful on this application she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file it.

Conclusion

I find that the tenant has established a total monetary claim of **\$640.00** comprised of compensation for interim repairs in the amount of \$190.00; compensation for loss of use of a portion of the rental unit in the amount of \$400.00; and the \$50.00 fee paid by the tenant for this application. Pursuant to section 72 this amount may be deducted from the next rent payment 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: November 12, 2015

Residential Tenancy Branch

