



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC FF

Introduction:

Both parties attended the conference and confirmed they were served the Notice to End Tenancy posted on the door and their Applications for Dispute Resolution personally. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies 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;
- b) An Order of Possession pursuant to sections 46 and 55; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies for orders as follows:

- d) To cancel a Notice to End Tenancy for unpaid rent;
- e) An Order that repairs be done;
- f) A monetary order or rent rebate as compensation for repairs not done to the property.

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 any relief?

Has the tenant proved on the balance of probabilities that they are entitled to compensation for neglect of the landlord to do repairs?

Late Evidence:

The tenant submitted photographic evidence on January 14, 2016 and the landlord objected that it was late and he had no opportunity to respond adequately to it. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure provides that evidence intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing. I find this evidence was submitted

seven days before the hearing and it would be unfair to the landlord to consider it as he has not had adequate time to respond. Therefore I decline to consider this late evidence.

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 tenancy commenced in August 2012, that rent was \$900 a month but was reduced to \$850 a month as of April 2014 and no security deposit was paid. The tenant said that the security deposit of \$450 was to be paid within two months when certain repairs were made but the repairs were never done. It is undisputed that the tenant owes \$700 rent for November 2015 and \$850 for December 2015 and \$850 for January 2016. The tenants made an Application on November 26, 2015 to request repairs and for compensation for repairs not done and to cancel the Notice to End Tenancy for unpaid rent.

The tenant said that all baseboard heaters were not replaced within the two months as agreed on the tenancy agreement. Three heaters were fine but 3 did not work, one in the bathroom, one in the kitchen and one in the front foyer. They cranked up the other heaters to compensate but it was a disruption of their peaceful enjoyment not having heat, especially in their one bathroom. They said their main concern was mould in the unit, especially behind the toilet. The landlord said he bought a special spray and they used it and said it was fine. The tenant said it did suppress the mould but the toilet mould continued. They provided no written notification to the landlord that this repair still needed to be done. The landlord said he had a Restoration Company in to fix up after a flood in one of the other units and he assumed everything was fine as the company gave no indication of mould. The tenant agreed that he had said it was okay.

The tenants also complained of a broken fireplace. The landlord said it is a sealed unit so no heat escapes and the lease never provided for the use of a fireplace; it looked nice so he just left it. The tenants also complained of unfinished ceilings in the kitchen and laundry room since October 2014 as they had been torn down to address the flood from an upper unit. The landlord said there were a lot of tenant's belongings on the floors and it was impossible to work on repairs and it was also impossible to arrange a time with the tenants. He provided no Notice of Entry for repair. The tenants also noted there was a broken tap in the kitchen since the beginning of the tenancy and no door knobs on several doors. They agreed the broken stove was fixed right away. The tenants also said the landlord had agreed to put carpet on top of the cement floors in the unit and he had written this on the back of the lease but they had no copy of it. The landlord denied ever promising that or writing it on the lease. He said the floors were painted cement. The tenants also complained of water entering the unit, making

the entrance way wet and muddy. The landlord denied this. He said there is a step that prevents water entering and the tenants parked their moped in the entry way which may have brought in some water and mud. The tenants noted they were charged rent for a 3 bedroom unit when it was only a 2 bedroom as the daughter's bedroom was the entrance/mudroom.

In evidence is the Notice to End Tenancy for unpaid rent, proof of service, the tenancy agreement, a list of repairs needed by tenant and a written response by the landlord.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Order of Possession:

I find the landlord entitled to an Order of Possession. The Notice to End Tenancy was served dated November 23, 2015 for unpaid rent of \$700 and the undisputed evidence is that no rent has been paid since. The tenant appeared to believe they could withhold rent for repairs. However, section 26 of the Act provides that rent must be paid when due, whether or not the landlord fulfills their obligations. I find the tenancy was at an end on December 6, 2015 and the landlord is entitled to an Order of Possession effective January 31, 2015 as he agreed.

Monetary Order:

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord met the onus of proving the amount of rent owed. The tenant did not dispute the amount. I find the landlord entitled to recover \$700 for November 2015 and \$850 for each of December and January and to recover their filing fee of \$50 for the application.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the landlord through act or neglect caused them to lose the reasonable enjoyment of their suite through failing to do necessary repairs contrary to sections 32 and 33 of the Act. I find the tenancy agreement provided that all the heaters would be fixed within two months of the commencement of tenancy. I find three of the six heaters were never repaired and working. Although the tenants got heat from the other heaters, I find this lack of working heaters in three rooms (especially their only bathroom) was a significant detriment to their peaceful enjoyment of their suite for at least six months of every year for 3 years (2012- 2015). I find them entitled to a rebate of rent of \$30 a month for 18 months for a total of \$540. I find the baseboards were never installed as promised on the tenancy agreement and the laundry and kitchen ceilings were not repaired after the flood in 2014 from another tenant's unit. The tenant alleged the lack of baseboards

allowed more cold air to enter and added to their discomfort but he said the ceiling problems were largely cosmetic items. I find the tenants entitled to a further rebate of \$100 for lack of installation of baseboards and lack of ceiling repair. In making this Decision, I note the landlord paid for the electricity so the extra heating costs were borne by him.

I find insufficient evidence to support the tenant's claim that carpets were promised but never provided. The landlord denied such a promise and the tenant was unable to provide anything in writing to support this claim. I dismiss this portion of their claim. Regarding the front entry and claim of flooding, I find insufficient evidence to support their claim. I find it just as likely that entering with a moped and storing it in the entry in winter would permit some water and mud ingress. I dismiss this portion of their claim. I find insufficient evidence to support the tenant's claim for a working fireplace. I find this was not a provided amenity in the tenancy agreement and I find the landlord's evidence credible that it was left as a decorative item.

In respect to the mould issue, I find insufficient evidence to support the tenant's allegations of continuing mould behind the toilet which was not addressed by the landlord. The tenant agreed that the spray provided by the landlord was working and he provided no evidence that he sent a further communication to the landlord to fix the mould. The list of complaints appears to have been generated after the Notice to End Tenancy was served. I find the landlord replaced the stove promptly in November 2015 and the hot water heater in December 2015. I find insufficient evidence that the problem with the kitchen tap was ever brought to the landlord's attention. I dismiss the tenant's claim with respect to the mould and the kitchen tap.

The tenants agreed in the hearing that the lack of hydro for 3 days was probably an outage caused by a BC Hydro issue as the landlord said. I find the yard maintenance was to be done by the tenant according to the tenancy agreement as they are the "lessee" so they are not entitled to a rebate for lack of yard maintenance. I find the weight of the evidence is that the landlord did provide a weed whacker that somehow was lost. I find insufficient evidence that the tenants had to supply their own. No invoices were provided and the landlord alleges the yard was not maintained. I dismiss these portions of their claims.

The tenants made allegations of defamation against the landlord but I advised them that these are not subjects I am prepared to consider in this Application. They might be subjects suitable for another forum such as the court system.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 31, 2016 as agreed. I find him entitled to a monetary order as calculated below and to recover filing fees for his application.

I find the tenants entitled to a rent rebate for the reasons set out above. The granted rebate will be deducted from the monetary order to the landlord and calculated below. I dismiss the remainder of the application of the tenant. I find it irrelevant to order the landlord to repair as the tenancy is ended and it is up to the landlord to make suitable arrangements with new tenants. No filing fee was paid so none is recoverable.

Calculation of Monetary Award:

Rent arrears and loss for Nov., Dec. 2015 and January 2016	2400.00
Filing fee	50.00
Less rent rebate granted	-640.00
Total Monetary Order to Landlord	1810.00

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: January 21, 2016

Residential Tenancy Branch

