



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, OLC, RP, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for emergency repairs
- b. A repair order
- c. A monetary order in the sum of \$7444.22
- d. An order allowing the tenants to reduce the rent for repairs, services or facilities agreed upon but not provided.

A hearing was conducted by conference call in the presence of the applicants and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The tenant testified the Application for Dispute Resolution and Notice of hearing were sent by registered mail on January 30, 2016. The tenant provided a Canada Post tracking number as evidence of service. The tenant stated the package was returned unclaimed.

Residential Tenancy Branch Policy Guideline #17 includes the following:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not pick up, service continues to be deemed to have occurred on the fifth day after mailing,

Section 90 of the Act provides that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a repair order?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to an order to reduce the rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy began on August 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$600 at the start of the tenancy.

The tenants testified that the carpet is old and has been stretched to the point where there is a big ripple in the middle. It has become a tripping hazard. They stated they have asked the landlord to have the carpet repaired on several occasions. However, the landlord failed to do so. The carpet was eventually repaired at the end of January 2016.

The tenants testified the stove needs to be replaced. The burners are uneven and dangerous. The stovetop gets unreasonably hot. The dishwasher is broken. The washing machine is broken. The water does not drain properly. The kitchen lighting is shorting causing the bulbs to burn out. The hot water tank is 13 years old, is unreasonably hot and is seeping water.

The tenants filed a number of photographs of the carpet and stove. There is evidence of text messages between the parties.

The tenant testified that he tripped on the carpet and injured his knee and shoulder. He lost significant work because of this injury.

The tenants referred me to a decision of another arbitrator dated January 7, 2016 where the landlord was ordered to inspect the carpet and make the necessary repairs and where the landlord was ordered to have the stove inspected and repaired within 15 days of receiving this order. The landlord has fixed the carpet. However, he has not inspected the stove.

Application for a Repair Order:

Section 32 of the Act includes the following:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

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

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After hearing the undisputed testimony of the tenants I made the following order:

- a. The landlords replace the stove
- b. The landlords repair or replace the dishwasher.
- c. The landlords repair or replace the washing machine.
- d. The landlords repair the kitchen lighting.
- e. The landlords replace the hot water heater.

I further ordered that the landlord complete these repairs by March 31, 2016.

Tenants Application for a Monetary Order:

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

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

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires the following:

- a. that it be established that the damage or loss occurred,
- b. that the damage or loss was a result of a breach of the tenancy agreement or Act,
- c. verification of the actual loss or damage claimed and
- d. proof that the party took all reasonable measures to mitigate their loss

With respect to each of the tenant's monetary claims I find as follows:

- a. I determined the tenants are entitled to \$400 for the cost of cleaning when they moved into the rental unit. The landlord failed to properly clean the rental unit when the tenants took possession. The tenants produced a receipt to establish the quantum. The tenants proved this claim.
- b. I determined the tenants are entitled to \$200 for the cost of cleaning after the flooring was removed. The landlord made repairs but failed to clean after the repairs were made. The tenants produced a receipt to prove this claim.
- c. I dismissed the tenants' claim of \$4000 for injuries received from tripping on the carpet. The tenant failed to produce any medical evidence to support this claim or any documents to verify his alleged loss. I determined this claim has not been proven.

- d. I dismissed the claim for two Canada Post registered mail receipt. This is a cost of preparing for litigation. The only jurisdiction an arbitrator has relating to the cost of litigation is the cost of the filing fee.
- e. The tenants seek compensation of \$400 per month for 6 months because of the reduced value of the tenancy. The evidence indicates the tenants asked the landlord to make repairs shortly after they took possession. The landlord failed to make the repairs. I determined the amount claimed is excessive. I determined the tenants are entitled to compensation in the sum of \$1200 to the end of March 2016.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

I dismissed the claim for a reduction of future rent. The repair order is for a number of items. It is possible the landlord will repair some but not all of the items within the time period required. The reduction of future rent would have to consider what repairs if any have been made. If the landlords fail to make the repairs as provided above the tenants have the right to make a future application for compensation for the reduction in the value of the tenancy from March 31, 2016 onward.

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: March 10, 2016

Residential Tenancy Branch

