



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; an order to allow the tenant to reduce rent for repairs not provided pursuant to section 65; and an 'other' remedy under the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The tenant testified that her indication of an "other" remedy in her application merely referred to the application for a monetary award as a result of a rent reduction.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss?

Is the tenant entitled to an order to reduce the rent for repairs not provided?

Background and Evidence

This tenancy began on October 1, 2014. In June 2015, the current landlord purchased the residential premises (including the 2 bedroom rental unit) and continued to rent the unit to the tenant. A copy of the residential tenancy agreement was submitted as evidence for this hearing. The agreement indicated a rental amount of \$750.00 payable the first of each month. The landlord testified that he continues a \$350.00 security deposit paid by the tenant at the outset of this tenancy.

The tenant testified that she continues to reside in the rental unit as of the date of this hearing. She also testified that she has accepted a 2 Month Notice to End Tenancy issued by the landlord. She testified that she advised the landlord she would vacate the

residence by August 2016. She claims \$600.00 against the landlord for his failure to repair and repair properly a water leak within the unit. She testified that a substantial water leak in November 2015 caused damage to the interior of her unit and limited the use of one of the two bedrooms in the unit. She testified this leak has caused damage to the unit she lives in; inconvenience to her family; and possible harm (development of mold within the unit).

The tenant testified that, as of November 12, 2015, the walls in her children's bedroom were wet and easily perforated. She testified that she reported the water leak to the landlord on November 13, 2015 because she discovered the leak late at night and did not immediately realize its extent. She testified that there was extensive water damage in the residence. The tenant submitted photographs that showed water damage to ceiling and at least one wall within the rental unit. The photographs show rodent feces as well as several dead mice and rats near the walls. The images of the walls and ceiling, many date-stamped May 19, 2016 depict wet spots in the walls as well as areas with dried water damage. The dried water marks on the ceiling are shown around the ceiling light fixtures. There is minimal indication of repair beyond spray foam (spray style insulation) around molding inside the home and door and window sills outside the home.

The tenant testified that the landlord took approximately 6 days to begin repairs to the rental unit after the leak. The landlord testified that he acted immediately when advised of the leak. He testified that, beyond a visual inspection when he purchased the property, he relied on the tenant to advise him of any repair issues within the rental unit. The landlord testified that he worked with a contractor on the rental unit. He testified that he paid the contractor cash and received no receipt. He has no records of the contractor's work although he described the extent of the work done after the leak was discovered; new studs, new drywall; and vapour barrier material.

The landlord submitted two invoices as evidence of his repair work. One invoice, dated November 28 for \$10.00 indicates an order for "flexible aluminum duct". A second invoice dated November 28 for \$82.32 indicates an order for plywood, custom metal and paper. Both parties agreed that most of the repair work was done by the landlord himself. The tenant testified that the landlord did cosmetic repairs to patch the wall but did not do plumbing work to fix the leak. The tenant testified, referring to her recent photographs that the leak has recurred. The tenant also testified (undisputed by the landlord) that the landlord did not provide services requested by the tenant to address pests and potential mold within the rental unit. The tenant testified that any requests to the landlord went unaddressed.

The landlord did not dispute the initial damage to the second bedroom in the rental unit or that the tenant had some loss of use. The landlord submitted, however, that the tenant continues to use the bedroom where the leak occurred. He did not dispute her testimony that she does not use the room as a bedroom but merely for storage. He testified that he believes she has really suffered no significant loss: that he has suffered the loss in that his that is now damaged likely at the hands of the tenant. He submitted that it does not make sense that he will fail to repair his own property.

Analysis

I have considered the submissions of both parties at this hearing. I find that the tenant's testimony was calm, measured and candid. The tenant's testimony was consistent with the documentary and photographic materials showing a continuing leak in the rental unit as of the middle of May 2016 and that the landlord did not buy repair materials until 7 days after the leak was reported by the tenant.

The tenant bears the burden of proof on her application. The evidence and testimony submitted by both parties are evidence of a significant leak in the rental unit that remains unrepaired. I accept the evidence of the tenant that she has been unable to use the second bedroom in her rental unit and has had to have her children sleep in other parts of the home. I accept the undisputed evidence of the tenant supported by her documentary evidence that the landlord did not respond, as per his obligation to her reporting of the leak or requests for repairs, pest control and other necessary fixes as a result of the leak. I refer the landlord to the *Residential Tenancy Act* (including the sections reproduced below) to ensure he meets his obligations in the future.

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.

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

... (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I find that the tenant has suffered loss and inconvenience from the date of this leak to the date of this hearing. The tenant applied for a rent reduction of \$100.00 per month as of May 12, 2016. The tenant has testified that she will be vacating the rental unit as a result of acceptance of a 2 Month Notice issued by the landlord pursuant to section 49 of the *Act*. When a tenancy ends as a result of a 2 Month Notice, section 51 of the *Act* applies,

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

I find that the tenant has proved that there was a water leak in her rental unit and that it was not addressed sufficiently by the landlord. I find that the tenant has proved that the damage and leaking is ongoing as well as other effects including pests. I find that the tenant is entitled to a rent reduction of \$100.00 per month from the date of the leak until the end of this tenancy. The tenant sought \$600.00 to address 6 months of compensation up to May 12, 2016. Therefore, I award the tenant a monetary order including the amount of **\$600.00** as compensation for the effects of the water leak for the 6 months of this tenancy.

Conclusion

I issue a monetary order in the amount of \$600.00 against the landlord.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 07, 2016

Residential Tenancy Branch