



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC RR

Introduction:

Both parties and witnesses attended the hearing. The tenant gave evidence of service of her Application and the landlord agreed he received her documents. The tenant/applicant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to section 33 and sections 7 and 67 for the cost of emergency repairs and compensation for her labour and extra costs incurred by living in a remote cabin without proper insulation and maintenance.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she suffered hardship and incurred costs for emergency and other repairs and other items due to the neglect of maintenance by the landlord? If so, to how much compensation has she proved entitlement?

Background and Evidence:

Both parties and several witnesses attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord briefly left the conference and mistakenly did not dial in again while one of his witnesses, P.S., gave evidence and was cross examined by the tenant. The tenant claims as follows:

\$1040 for work that she did on the cabin to date and still owing.

\$900 which is half of the no charge items she noted at the time as she did these items for comfort but won't be taking advantage of them now as she is vacating in June 2016. She won't be able to enjoy the fruit of her labours.

\$400 which is half the cost of the hydro used to thaw out the pipes (landlord's responsibility) and screwing down the entire sub floor except the bathroom

\$51 for copies of prints made for arbitration

(states subtotal is \$2400)

\$2500 for lost wages as unable to work at stained glass projects while solving problems of inadequate housing

\$375 for extra cords of wood used

\$375 for deposit to hydro so they would not shut it off because I could not pay their bill and the landlord refused me free rent for April 2016 which is now being deducted from my monthly support cheque.

States total is \$5650 with lost wages calculation and \$3150 without.

The tenant supplied many emails and photographs but no invoices to support her claim. In evidence is a lease signed June 15, 2015. Among the relevant contents, it states the tenant is responsible for hydro, telephone and internet costs and the landlord will provide reasonable maintenance. It states the tenant will be compensated for patrol work on the 800 acre property and the landlord shall install baseboard heaters in the living room/kitchen, backroom and bathroom and the tenant shall ensure the heaters are turned on whenever the temperature might go below freezing.

The landlord said the tenant never complained of any issues prior to move-in; she knew what the cabin was like and did work on it and emailed there was no charge for doing such things as tiling the bathroom. On September 17, 2015, the tenant emailed that the wood stove only needed a door handle and latch. The landlord said it was in good condition and he had spent \$800 on it. In November 2015, the landlord and tenant emailed concerning an electric company saying a chimney would have to be replaced and the tenant saying it could wait until spring.

Both parties confirmed the rent was reduced from \$500 a month to \$400 a month from December 2015 to March 2016 'to compensate for your work to date and any work you may do in respect of the property between now and March 31, 2016'. The landlord refers to communications by page numbers in the evidence but I find the pages are not numbered in the evidence so I shall refer to the emails that I find relevant. Several emails from the tenant indicate she is happy that the landlord is working with her and doing everything in his power to resolve the issues. On December 28, 2015 she wrote the bathroom was now warm and looked good. The tenant agreed the landlord had supplied her with costs of materials to this point. On January 4th, 2016, the landlord emailed the tenant asking her to do no further work on the cabin and stating that the rent reduction from December to March 2016 was in full compensation of her work until March 2016.

In January 2016, it appears that the tenant thought the woodstove was eating too much wood and saying she was ill prepared for winter in the cabin. She complains about doing \$17,000 in labour and only getting a \$35 gift card and a free move. The landlord said he believes the \$17,000 refers to a dispute she had with a previous landlord who confirmed that when he called. In January and February 2016 and continuing, the

tenant continues to thank the landlord for doing all he can to make being here as pleasant as possible and working to get the cabin to the standard of living required and on February 1, 2016, the tenant writes that the stove is holding for now. He got an email from her in March enclosing a list of the work she had done and saying she would like to stay for another year and in reply, the landlord advised her again of his January request to do no more work on the cabin. He said the weather showed last winter was exceptionally warm in that area. He enclosed a list of expenses that he had from June 28, 2015 to February 4, 2016 for a total of \$7,310.07. It included bathroom renovation by a professional plumber, electric work, insulation supplies x 3, plowing the driveway, installation of 3 baseboard heaters in December 2015, and supplies of screws for floor and chimney inspection in February 2016.

The tenant said she had to perform emergency thawing of the pipes twice using a hair dryer and a space heater. She requests costs of hydro for this. She said her costs escalated from \$45 a month to \$150 a month in winter. She said the rent reduction was to cover the excessive hydro bill, not for her work to date. She enthused about the setting of the cabin but said it was so uncomfortable due to drafts and lack of insulation. The daughter of the landlord gave evidence of providing free cords of wood to the tenant. She said she had no knowledge regarding the comfort of the cabin for the tenant but said she found the main living area warm with just the stove in winter. She knew the previous tenants and heard no complaints about heat. She noted the rent was very low in comparison to others and the tenant acknowledged that the rent was very low in one of her emails.

Another friend/neighbour, P. S., testified for the landlord. She said a friend had lived in the cabin for several years with no issues but this was over 5 years ago. She said she was there in March 2016 and the cabin was comfortable but she did not know about the insulation. She noted the tenant had said she put on 3 logs at 7 a.m. and they were still burning at noon. She had helped with the plumbing issue and loaned a heater because of freezing. She said she knew of one tenant in the past 5 years who had lived there in winter.

A friend, D.M., testified for the tenant. She said she had used a chain saw to cut wood and the stove was not working properly as they could not shut the damper down. She helped the tenant put plastic on the windows and caulk as she could feel the wind coming through the house. She was concerned and brought up a heater. She heard the plumber say he would come but he did not. She offered to install the baseboard heaters supplied by the landlord but he refused. The landlord said he had a certified electrician install the heaters later for safety reasons. The list of work performed shows the heaters were installed December 7, 2015.

The landlord submits that he should not be responsible for the tenant's labour costs or her claim of discomfort with the cold. He did all he could as evidenced by the tenant's emails and he gave her no permission to continue work after January 2016 as the costs were prohibitive and in his opinion, her work was unnecessary. This was a cabin in a remote area, the tenant loved the area and understood what was involved in renting there. The rent was attractive to her and he promised no remuneration for things she wanted to do in the cabin. It was her choice and for what she deemed more comfortable that she did certain things and he reimbursed her for supplies up to the time he requested her to stop working on the cabin.

In evidence are over 75 pages of emails plus pages of photographs, the lease agreement and 6 pages of submissions by the landlord.

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

Analysis

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.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove on the balance of probabilities that the landlord violated the Act or the tenancy agreement causing her to incur damages or loss as a result. I find there is no provision in the lease agreement for the landlord to provide a wood stove or free wood for it. I find it obligates him to install baseboard heaters and he

had these professionally installed December 7, 2015. The landlord also plowed the driveway as stated in the lease. I find the landlord did not violate the lease agreement.

The tenant claims that the landlord did not provide adequate housing. Section 32 of the Act states a landlord must provide and maintain residential housing 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. I find insufficient evidence provided that the cabin did not comply with health, safety or housing standards. I find the tenant and her friend found it drafty and cold but given the age and location of the rental unit, I find the landlord was providing and maintaining it to the best of his ability. I find insufficient evidence that he neglected his obligations. I find he gave the tenant free firewood, provided insulation materials at her request, had 3 baseboard heaters installed in December 2015, and had the chimney inspected in February 2016. I decline to consider the arguments concerning the stove and firewood as there was no provision in the lease to supply these. I find the landlord did supply a stove and firewood however to assist her. He also had the driveway plowed for her three times. I find insufficient evidence that the tenant suffering with cold was due to act or neglect of the landlord. I find the evidence of comfort in the cabin is also conflicting with the landlord's daughter testifying to the history of comfort in the cabin by herself and other tenants and P.G. describing it as comfortable. The tenant's witness said it was drafty and the stove damper did not work properly. However, I do not find this evidence sufficient to satisfy the onus on the tenant to prove the inadequacy of the cabin. Therefore, I find her not entitled to compensation for her claim of inadequate housing.

The tenant claims \$1040 for work she did on the cabin. I find the tenant was never authorized by the landlord to provide work for wages. She volunteered her labour and I find evidence of her listing her labour as 'no charge'. I find insufficient evidence of any contract she had with the landlord to supply money for her labour so I dismiss this portion of her claim. Likewise, I dismiss her claim for a further \$900 for work she admits she listed as 'no charge' items. I find the landlord expressly told her to perform no work on the cabin after January 4, 2016 and he compensated her for work done with a rent reduction of \$400 (\$100 from December to March 2016). I find the landlord's evidence on this point more credible than the tenant's evidence that he supplied this reduction for hydro costs. I find the landlord's statement and credibility is supported by the emails at the time.

In respect to her claim for \$400 for half the cost of the hydro used to thaw out the pipes, I find insufficient evidence to support her claim. She said she used heating for thawing for 8 hours and her cost had escalated to \$150 a month for hydro in the winter. She

supplied no invoices to support her claim. Based on a 30 day month, her cost would be \$5 a day. Based on this, I allow her the nominal sum of \$15 for possible extra hydro costs for thawing out pipes. I find insufficient evidence that it was through an act or neglect of the landlord that her hydro was cut off; the evidence is that she did not pay their bill.

Regarding her claim of \$51 for copies for arbitration, I find my jurisdiction is limited by section 72 of the Act to an award of the filing fee for the arbitration process. I dismiss the claim for these other costs.

Regarding her claim for \$2500 for lost wages due to inability to work while solving the house problems, I find the cabin was not rented as a commercial work space. Furthermore, I find insufficient evidence that she had to do the work she undertook in the cabin. In several of her emails, I find she describes work such as tiling the bathroom with happiness and likes the additional comfort. I find insufficient evidence that the landlord requested her to do any work or solve problems she perceived in the cabin.

Conclusion:

I dismiss the major portion of the tenant's claim. I find her entitled to recover \$15 for additional hydro costs to thaw out pipes on some occasions. She paid no filing fee so none is awarded.

I HEREBY ORDER that the landlord forthwith either deduct \$15 from any unpaid rent of the tenant or pay the tenant this amount towards her past hydro costs for thawing out pipes.

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 09, 2016

Residential Tenancy Branch