



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC ERP RP RR FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; an order to the landlord to make repairs to the rental unit pursuant to section 33; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Two representatives for the landlord attended (Landlord NJ and Landlord SM) as well as one tenant: Tenant LK. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the cost of emergency repairs?
Are the tenants entitled to an order to the landlord to make repairs?
Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on January 20, 2016 and was scheduled as a one year fixed term lease from February 1, 2016 to January 31, 2017. The rental amount of \$1050.00 is payable on the first of each month. The landlord continues to hold a \$525.00 security deposit paid by the tenant at the outset of this tenancy.

The tenant applied for a monetary order of \$6468.58. The tenant testified that, on May 18, 2016, a large amount of water came into her unit as a result of a water leak. She testified that she had to move her belongings within the unit and cover them some of her belongings with a tarp. She testified that she contacted the manager on call on May 18, 2016. She testified that it took the landlord nine days to fix the leak. She stated that there is still damage in her unit and issues

(including a smell) as a result of the leak and the incomplete repairs. The tenant testified that she has stayed with friends and in hotels to avoid being exposed to the smell in her rental unit.

The tenant testified that the ceiling in her living room has been repaired but that the paint has yellowed from the water damage. She stated that her kitchen cabinets were damaged by the leak and that the front of the cabinet siding is coming off of the cabinets. She testified that the landlords have not taken steps to make further repairs. The tenant testified that she has spoken to Landlord JN in the hallway regarding the need for further repairs but that she has not put any requests of the landlord in writing.

The tenant sought compensation for the inconvenience of the leak, the resulting damage from the leak as well as her costs related to missing work, staying in hotels and laundering curtains. She submitted receipts for hotels, eating out and other purchases. She testified that further repairs are needed.

Landlord JN (manager on call) testified that action was taken immediately to address the leak. She testified that the landlord had to prioritize the repair work related to the leak. She testified that the immediate goal on attending to address the leak was to identify the source and stop it. She testified that the leak began in the unit above the tenant's unit and that the above unit had extensive damage. She testified that both the tenant's unit and the unit below the tenant's unit were damaged as a result of the leak. She testified that the damage was more extensive in the upper and lower units.

Landlord JN also testified that she has received no formal written requests for repairs from the tenant. Landlord SM (building manager) testified that he has visited the tenant's rental unit several times to examine the leak, inspect for damage and repairs as well as to confirm that the unit is safe for residence. He testified that the unit is safe for residence, stating that a safety inspector has signed off on the post-leak repair work. He further testified that he has not noticed any smell when in the rental unit.

The landlord submitted copies of notices of entry dated May 20, 26, 27, 2016 as evidence of the repair work on the tenant's rental unit. The landlord also submitted email correspondence between the landlord and a contractor in regard to the tenant's rental unit. The email dated June 6, 2016 states that the unit was thoroughly inspected for mold and a preventative measure was taken to ensure mold did not develop in the tenant's rental unit. The email states "there is no outstanding Health or Safety risk in their unit as a result of the leak".

Analysis

I note that photographic evidence was submitted for this hearing however the photographs were not useful in reaching a conclusion in this matter. I considered all evidence submitted by both parties as well as the testimony/evidence submitted at this hearing. My determination is based

on a finding of credibility as well as the burden of proof that the tenant is required to meet in this type of application.

The tenant claims for compensation from the landlord as a result of a water leak. The fact that a leak occurred affecting the rental unit is not in dispute. The matter in dispute is whether the landlord has met their obligation and, further if they are responsible for any costs incurred by the tenant. I note section 32 of the *Act* below address the obligations of a landlord with respect to repairs,

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.

In this case, the landlord was required to make emergency repairs pursuant to section 33 of the *Act* relating to leaking pipes. Based on the evidence before me, I find that the landlord responded in accordance with the *Act* by ensuring that someone was available to be contacted; that the tenants were advised of the emergency number to call; that they attended to the building immediately and took action within 24 hours as well as continuing with the repair work as needed. The landlord is not faced with legislative restrictions as to how they chose to prioritize or undertake repairs as long as they are complying with their obligations under the *Act*.

The two landlord representatives in attendance at this hearing gave sworn, undisputed testimony that the other units required more immediate attention; that the tenant has submitted no written follow-up repair requests; that the landlords have attempted to respond to the tenant's verbal requests by inspecting her rental unit. I accept the testimony of the two landlords that the unit has been repaired sufficiently. I also note that the tenant did not provide sufficient evidence to support her claim that the rental unit has an intolerable odor or that the kitchen cabinets require urgent attention.

The landlords' notices of entry submitted as evidence for this hearing show that on at least three dates in May 2016, the landlord attended to carry out repairs. Email correspondence submitted with contractors show that the landlord confirmed there is no mold or other health related issues as a result of the leak in the tenant's rental unit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the

damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

With respect to the tenant's monetary claim, an arbitrator may award damages for out of pocket expenditures that are proven at a hearing or for general loss when the value of a loss or item cannot be determined. At this hearing, the tenant provided some documentary evidence of expenditure in the form of hotel receipts and receipts for eating out. However, I find that the tenant has not provided sufficient evidence to support her claim that the landlord is responsible under the Residential Tenancy Act. Based on the lack of evidence of monetary loss or a monetary claim that meets with the requirements of the *Residential Tenancy Act*, I dismiss the tenant's application for a monetary award.

The tenant presented insufficient evidence to show that the landlord failed to complete repairs. I dismiss the tenant's application to order the landlord to make further repairs or to reduce the tenant's rent.

As the tenant has not been successful in her application, I dismiss the tenant's application to recover the filing fee.

Conclusion

I dismiss the tenant's application in its entirety.

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: July 4, 2016

Residential Tenancy Branch