



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC RP RR O OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; 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; and any other remedy available under the Act.

The landlord/respondent did not attend this hearing, although I waited until 11:55 am in order to enable the landlord to connect with this teleconference hearing scheduled for 11:30 am. The tenants both attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Tenant JM testified that she personally served the landlord with the Application for Dispute Resolution (ADR) for this hearing including the Notice of Hearing on August 23, 2016. Tenant JM testified that the landlord resides in the same building as the rental unit and therefore she was able to personally serve him at his residence. I note that the landlord submitted evidence for consideration at this hearing on September 28, 2016. Based on all of the evidence before me, I find that the landlord was sufficiently served with the tenants' ADR package including the Notice of Hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation?

Are the tenants entitled to an order requiring the landlord to comply with the Act?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs?

Are the tenants entitled to any other remedy available under the Act?

Background and Evidence

Tenant JM testified that this tenancy began on March 23, 2016 as a month to month tenancy with a rental amount of \$700.00 payable each month. Both tenants testified that there was no

written tenancy agreement between the parties and that the tenants did not pay a security deposit. Tenant JM testified that, since move-in, there have been problems communicating with the landlord and the condition rental unit.

The tenants both testified that there has been several inconveniences within the rental unit including but not limited to; lack of heating; plumbing leaks; possible mold; electrical wiring problems; and the landlord's girlfriend's verbal abuse.

The tenants testified that, after moving in, they discovered there was no central heating in the rental unit. The tenants testified that they had not been informed about the lack of heat before moving in. The tenants testified that they have decided to vacate the rental unit before the cold weather begins, at the end of October.

The tenants testified that a large leak from the ceiling occurred in early June 2016. Tenant GF testified that water continued to pour from the ceiling for approximately one hour and a half. Both tenants testified that some of their personal items were damaged or lost as a result of this leak including their laptop. Tenant JM testified that she replaced the laptop approximately one week prior to this hearing. Tenant JM also testified that a printer was damaged as well as the tenants' carpet and some boxes with photographs and personal papers.

Tenant JM testified that, three weeks after notifying the landlord of the leak, he came in and opened up the ceiling revealing what appeared to be black mold. Tenant JM testified that the landlord left the ceiling open for a period of time before sealing it up in a patchwork fashion with some ineffective sealant. Tenant JM testified that both she and Tenant GF lost work after this leak. Tenant JM testified that she took time off work to stay home and help the landlord repair the rental unit. Tenant GF testified that he took time off work to attend the doctor several times for asthma related to the mold in the rental unit.

The tenants testified that a second leak has now occurred in the rental unit within the last few weeks and the landlord has not made any attempts to address or repair the leak. The tenants both testified that, any time they approach the landlord regarding repairs to the rental unit, he tells them to "get out": to move out if they don't like the state of the unit.

Tenant JM testified that the refrigerator within the rental unit did not work for the first 6 weeks of their tenancy. She testified that it was eventually replaced with another second refrigerator that works the majority of the time but the freezer is not fully functional.

The tenants testified that they have had problems with the electrical within the rental unit from the outset. Tenant JM testified that a microwave supplied by the landlord sparked and caught on fire, had to be disposed of. Tenant JM testified that you cannot run two appliances at once or the fuse will blow. Tenant JM testified that, just as you cannot shower and run laundry at the same time, you cannot cook and run the dishwasher at the same time. She testified that sometimes, the lights flicker when certain appliances are running.

Tenant JM testified that the landlord was notified early in the tenancy about all of these issues and, because he is in ill health, the tenants chose to wait some time before filing a complaint. However, both tenants testified that they feel the unit is a threat to their health and safety and, as repeated requests for repairs have been met with abusive language and threats, they have decided to vacate the rental unit. However, the tenants submit that they should be compensated for the inconvenience and hazard within their unit during their tenancy.

Both tenants testified that the landlord's girlfriend often knocks on their door, yells and berates them. The tenants also supplied angry letters from the landlord and his girlfriend.

Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, 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.

In this case, based on all of the evidence submitted, I accept the testimony of the tenants regarding the condition of their rental unit and their ongoing efforts to request that the landlord make repairs. I find that the landlord failed to meet his obligations under the *Act* and did not address repairs that relate to the health and safety of his tenants. I accept the testimony of the tenants that they have dealt with repeated leaks within their rental unit and that they intend to vacate the unit due to the lack of provision of heat, amongst the other issues. Based on the materials provided, I also accept that the landlord's girlfriend has become a nuisance to the tenants.

Given all of the evidence provided and my finding that the tenants have provided credible evidence to support their claim, I find that the tenants have proved that they suffered a general loss as a result of the condition of the residential premises and rental unit. However, I note that

the tenants have not submitted sufficient evidence to support their claim and verify their actual loss by way of receipts or other documentary evidence. While the tenants cannot be compensated for the items they claim to have lost due to water damage or costs they have personally incurred, I find that the tenants are entitled to nominal damages in an amount that reflects the significant *disturbance and disruption* they described during the course of their tenancy.

In all of the circumstances described, I find that the tenants are entitled to a nominal damage award in the amount of \$1400.00 as well as the \$100.00 cost of the filing fee as they were successful in their application.

Conclusion

I issue the tenants a monetary order of \$1500.00.

The tenants are 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: October 7, 2016

Residential Tenancy Branch