



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNSD MNDC FF

Introduction:

Both parties made Applications and attended the hearing. They each acknowledged receipt of each other's Applications by registered mail. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss due to the breach of a fixed term lease;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies for a refund of two months' rent and other damages pursuant to section 65 of the Act for lack of heat and lack of maintenance and repair contrary to sections 32 and 33 of the Act.

Issue(s) to be Decided:

Is the landlord entitled to a Monetary Order for rental loss and filing fee? If so, in what amount?

Is the tenant entitled to a Monetary Order for a refund of two months rent and other damages? If so, in what amount?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2016 on a fixed term lease expiring August 1, 2017, a security deposit of \$850 was paid and rent was \$1700 a month. It is undisputed that there was a water problem and the tenants vacated on October 3, 2016. They had only paid rent for August and September. The landlord claims 10 months of rent or \$17,000 due to the breach of the fixed term lease. The tenants say the house was uninhabitable and they had to move out.

The house was described as a single storey house that had a flat roof over the laundry room area. The furnace was housed below ground in a separate cemented area. Both parties agreed that the observable problems occurred on or about September 17/18, 2016 after a heavy rain. The tenants observed the below ground area was flooded submerging part of the furnace and hot water tank and some electric wires. They also noted the flat laundry room roof had about 10 inches of water on top. It is undisputed that the tenants called the landlord on September 19, 2016 and told him of the problems. He said he sent his cousin who is experienced in housing matters. The tenants said the cousin stomped on the laundry room roof and then ripped part of it off to get rid of the water. This resulted in water coming into the laundry room and covering part of the tenants' new washer and dryer and some pictures. The tenants said there was no lasting damage to the appliances and the pictures were inexpensive so they are not claiming any loss for these items. The landlord said there was a plugged drain from the laundry room roof and he does not know why the cousin ripped off part of the roof. The tenants had to clean up the water themselves. The landlord said he had not attempted to re-rent the house and might occupy it himself due to the disheartening experience he has had with this rental. He incurred no expenses in an effort to re-rent.

On September 23, 2016, the landlord came and fixed the hole in the roof. On September 20, 2016, the landlord had a professional pump company install a new sump pump as the old one had malfunctioned. This is confirmed by the company's receipt. The tenant said that the plumber and contractor had told them that the house had serious problems and should be torn down. The landlord denies that they said anything to him. He said when he bought the house, it had been renovated. The tenants said when they did the move-in inspection, the house had looked good being all painted and fixed up. However, there was a foul smell from the laundry room which got worse and when the roof was being repaired, they noticed rotting wood and mould and this was obvious behind their appliances when they moved them. They believe this caused some respiratory problems for them and grandchildren. They sent in photos showing a smelly drain in the laundry room and some alleged mould behind the gyproc.

The tenants also note the furnace had been turned off and the meter locked since April 2016. The tenants spent \$27 to have the lock removed from the meter by the Gas Company but the Company said a contractor would need to come and inspect the furnace and turn it on. The landlord said the pilot light was off since April but he showed the tenants this at move-in and told them they would have to light it to have the furnace working. After the flood, the tenants said they were informed it was unsafe to do this until the furnace had been inspected. Although they said they called the landlord, they said nothing was done about it and they suffered with no heat in September although August was warm enough. The landlord said this house was a renovated house and he

addressed the problem with the plugged roof drain and malfunctioning sump pump. He was trying to deal with the tenants' problems when they abruptly said they were leaving on October 3, 2016 with no notice. In evidence are written statements from the tenant, the tenancy agreement, the bill from the pump company, photographs and oral statements of the parties.

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

Analysis:

Monetary Order

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.

I find the weight of the evidence is that the tenants did not encounter water problems until September 17/18, 2016 when they noted water in the below ground area where the furnace and hot water tank were located. I find the evidence is that the landlord acted quickly to correct the problems but that he used a relative who made the problem worse as he ripped off part of the laundry room roof causing a flood there as well. I find the landlord also employed licensed contractors September 20, 2016 to replace the sump pump which got rid of the below ground water and he had the roof fixed. However, I find insufficient evidence that the problems with the furnace were addressed adequately and the tenants had no heat for September and it was getting colder in October when they left. I find the landlord had probably renovated the house as he stated but I find the photos of the tenant persuasive that many problems with rot or damp may have been covered up. This is in violation of section 32 of the *Act* which requires a landlord to repair and maintain a property and make it suitable for occupation by a tenant.

I find the tenants occupied the home for two months and the landlord is entitled to his rent for those two months. The weight of the evidence is that the landlord was continuing to repair the property when the tenants vacated with no notice on October 3, 2016. I find it is not reasonable to expect the landlord to re-rent the property for October as no notice was given and the tenants occupied the unit until October 3, 2016. I note

rent is payable on the first of the month. I find the landlord entitled to recover rent for October 2016 in the amount of \$1700.

In respect to his claim for an additional 9 months due to the breach of the fixed term lease, I find he has not acted to mitigate his damages as required under section 7 of the Act and the test (quoted above). He said he had not advertised the house for rent and was considering occupying it himself due to his bad experience. Therefore, I find him not entitled to recover rent after October 2016. I find the tenancy is at an end as of October 31, 2016 as the house was uninhabitable and unsafe due to the problems of continued wet electric wires and furnace and no heat when the tenants vacated.

In respect to the tenants' claim for a refund of rent, I find they fully occupied the home for August and September, 2016 and the water problem was largely confined to the laundry room area when it occurred about September 18, 2016. Therefore, I find them not entitled to a refund of rent for those months. However I find them entitled to a rent rebate of \$100 for lack of furnace heat for September and an additional \$100 as compensation for their work to clean up flood water which is the landlord's responsibility to repair. I also find them entitled to recover \$27 for the cost of unlocking the gas meter. Although the tenants tried to add to their claim a large hydro bill they received, I find insufficient evidence that this was caused by the landlord's negligence or even that it was an unusual amount for that kind of home so I dismiss this portion of their claim. Although they claimed moving expenses, I find the landlord did not through act or neglect cause the tenants' moving expenses. They chose to break their fixed term lease when they believed the house to be uninhabitable although the landlord was attempting to repair it. In a recent Supreme Court Decision, Mr. Justice MacKenzie found that the arbitrator's decision "to award compensation to the upstairs tenants, notwithstanding the fact that she clearly and unequivocally found no inappropriate conduct or neglect on the part of the landlord," was unreasonable (para. 18). In this case, as stated, I find the landlord was acting diligently to correct the problems but the tenants vacated before the work was completed. Their security deposit will be deducted from the amount owed to the landlord for October rent

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I find the tenants entitled to a rent rebate of \$227 for the reasons stated above and to recover their filing fees for their application as it had some merit.

Calculation of Monetary Award:

October rental loss	1700.00
Filing fee	100.00
Less tenant rent rebates	-227.00
Less tenant filing fee	-100.00
Less security deposit	-850.00
Monetary Order to Landlord	623.00

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: November 24, 2016

Residential Tenancy Branch