



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, OLC RP

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order that the landlord make emergency repairs.
- b. An order that the landlord make repairs.
- c. An order that the landlord comply with the Residential Tenancy Act, regulation and/or tenancy agreement.
- d. A monetary order in the sum of \$11,000
- e. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing served on the landlord by mailing, by registered mail to where the landlord carries on business on December 9, 2016. I find that the Amended Application for Dispute Resolution was personally served on the landlord on December 28, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to an order for emergency repairs and/or repairs.
- c. Whether the tenant is entitled to an order for an order that the landlord comply with the Residential Tenancy Act, regulation and/or tenancy agreement.

- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on April 1, 2016 when the parties entered into a one year fixed term tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month plus \$150 per month for storage payable on the first day of each month. The tenant(s) paid a security deposit of \$750 and a pet damage deposit of \$750 at the start of the tenancy.

The tenant seeks compensation because she submits the rental unit is a safety risk that forced her to vacate at the end of November. Her belongings remain in the rental unit. She has paid the rent for December 2016 and January 2017.

Law

Section 32(1) of the Act provides as follows::

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.

Section 7 of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #16 includes the following:

“A. LEGISLATIVE FRAMEWORK

Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

....’

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act’s provisions for returning a security deposit or pet deposit).

The tenant’s claim is based on the following evidence:

- The tenant orally complained to the landlord that her fridge was not working effectively. At times it froze all of her food. The fridge was very noisy and the noise increased. On September 23, 2016 she made a complaint in writing. The manager arranged for the maintenance person to look at it on September 27, 2016. The maintenance person looked at it on September 28, 2016.
- The tenant told the maintenance person that it was disturbing her sleep and it was adversely affecting the health of her dog.

- The maintenance person pulled the fridge out to examine it. At that time the tenant noticed there was a square panel in the back that could be removed.
- The maintenance person took an audio recording and said he would listen to it on his computer and would follow up on the matter.
- The follow up never happened and the landlord failed to address the problem. .
- At the end of the November the Tenant became aware a new manager had taken over and she reported the problem. The problem was worse at night. The manager told the tenant the landlord was not willing to inspect the problem during the evening hours as it would increase costs.
- The landlord told the tenant they would only continue to investigate the matter further if the tenant agreed to pay the cost of the investigation if nothing was found.
- The condition in the rental unit became worse. The tenant's dog collapsed in front of the fridge. The tenant testified she no longer felt safe and she left the rental unit on November 29, 2016.
- The tenant relies on a letter dated December 13, 2016 from J W, Building Health Consultant which includes the following:
 - He inspected the rental unit on December 6, 2016 and performed an assessment with several Trifield meters made by AlphaLab in Utah for levels on 60 Hz magnetic fields..
 - The levels in the suite ranged from 3.5 to over 20 milligauss. The typical level in a residential building is approximately 0.5 to 1.5 milligauss.
 - The high levels of 60 Hz magnetic field are presumably due to large current carrying wires in the floors and walls adjacent to the suite.
 - The field persist even if the main electrical breaker for the suite is shut off. This indicates that field are not from any source within the suite itself.
 - High sources of fired are occasionally due to unbalance current loads in electrical wires.
 - Depending of sensitivity of any given resident, they will likely experience some negative health impacts with living in fields of 6 to 20 milligauss as compared to significantly lower levels (o.5 milligauss). For some this may be not sleeping as well, perhaps having more intense colds and flues, and usually a general lower level of energy. For sensitive individuals, it is usually best to relocate to a more tranquil lower 60 Hz electromagnetic field environment.
- Although the letter is dated December 13, 2016 she did not provide this letter to the landlord until December 28, 2016.

The landlord disputed much of the tenant's evidence and gave the following evidence:

- He attempted to contact JW on several occasions but he failed to return his call.
- The landlord questions the qualifications of JW and whether he has the expertise to do the test and offer an opinion. The letter does not disclose JW's credentials.
- The landlord produced a letter dated December 28, 2016 from GL, the on-site handyman and certified electrician for over 20 years. The landlord states he inspected the unit and determined that no electrical device was creating any cause for concern. He concluded that the health issues brought forward by the Tenant could be caused by any device in the suite.
- The landlord produced a letter from the manager dated December 28, 2016 stating she inspected the rental unit on December 1, 2016 after receiving a complaint from the Tenant and could not find any electrical issues. Notice was given to the Tenant and the rental unit was inspected on December 15, 2016 and December 20, 2016 and there was no evidence of electrical issues that would cause health concerns to an animal or person.
- The landlord produced an e-mail from DG (Field Safety Representative) to the landlord dated December 21, 2016 that states the following:
 - "The diagnoses of "electromagnetic hypersensitivity" and "multiple chemical sensitivity" are not recognized by the medical and scientific communities. Up to 5% of the population has come to attribute a large variety of nonspecific symptoms to non-ionizing electromagnetic fields from cell phones and other common electrical devices or chemicals in their environment. Their complaints have been thoroughly evaluated. Numerous studies and systemic reviews have been done; they are summarized in a Wikipedia article. Just to give one example, a systematic review published in Psychosomatic Medicine in 1006 analysed 31 double blind studies comparing real radiation to sham radiation. Patients couldn't tell the difference. 24 of the studies found no effect, 7 reported "some" supporting evidence (2 of which could not be replicated on subsequent trials by the same researchers), 3 were false positives attributed to statistical artifacts, and the final 2 had mutually compatible result.

Even if the claims would be true, this is only referring to electromagnetic fields within range of the body, which fridges, ballasts & other household power utilization do not. For example, 10 to 30 cm is the size of a 120 V to 240 V.

Because these claims of hypersensitivity are not recognized by any medical or scientific community, I do not suggest supporting any warranty claims in regards to these issues.

- The landlord testified the rental property is only a year old. To gain occupancy the landlord obtained all the required permits and approval of municipal inspection.
- No other residents have complained to the landlord of health issues. .

Analysis

The evidence of both parties is not satisfactory and has made it difficult for an arbitrator to determine whether there are safety issues within the rental unit. .

Little weight can be given to the opinion evidence contained in the letter of JW for the following reasons:

- He did not attend the hearing and did not make himself available to be questioned by the landlord.
- His evidence is not in the form of an affidavit and has not been made under oath.
- The letter does not disclose his qualifications and it is impossible for an arbitrator to determine whether he is qualified to do the test and/or provide an opinion.
- The letter does not indicate whether he is employed by a firm qualified to work in the area.

The landlord has provided evidence which has similar problems which include:

- DG failed to attend the hearing and was not available to be cross-examined.
- The opinions expressed are not in the form of an affidavit and were not given under oath.
- DG identifies himself as a Field Safety Representative but does not provide a summary of his qualifications.

The problem is further complicated because the parties do not appear to be focusing on the same thing. JW states "The high levels of 60Hz magnetic fields in this suite are presumably due to large current carrying wires in the floors and walls adjacent to the suite..." The landlord's tests appear to relate to determine whether there is a problem with the electrical appliances. It does not appear the landlord has taken steps to measure whether there is a high magnetic field.

The applicant has the burden of proof to present sufficient credible evidence to prove her claim on a balance of probabilities. After carefully considering all of the evidence I

determined the applicant has failed to present sufficient evidence to prove her claim for the following reasons:

- The tenants' claims are out of the ordinary and not common and an arbitrator cannot rely on common experience..
- The opinion evidence provided by JW is not satisfactory and little weight can be given to the letter of JW for the reasons set out above.. Further, the tenant's health concerns are different than those expressed in the letter from JW.
- The tenant failed to provide medical evidence to support her health claims.

I dismissed the Tenant's claims on the basis that the Tenant failed to prove the landlord has breached the Act, regulations and tenancy agreement. On that basis alone all of the tenants' claims are dismissed. In addition there are other reasons to dismiss the tenant's claim including the following:

- a. I dismissed the tenant's claim of \$100 for the cost of transportation to from her rental unit to her temporary place as the tenant failed to provide evidence in the form of receipts etc. to quantify this claim.
- b. I dismissed the tenant's claim of \$1500 alleging she can no longer work from home as the tenant failed to present evidence of any loss of income.
- c. I dismissed the tenant's claim of \$300 as the tenant failed to present evidence of additional costs incurred because she cannot cook or eat in her apartment as no receipts for food were provided..
- d. I dismissed the tenant's claim of \$1000 for Vet bills as the tenant failed to provide evidence to quantify this claim.
- e. I dismissed the tenant's claim of \$100 to purchase anti-inflammatory drugs as the tenant failed to prove the landlord was at fault.
- f. I dismissed the tenant's claim of \$2000 for the cost of moving as the tenant failed to prove the landlord was at fault and has not incurred this expense.
- g. I dismissed the Tenant's claim of \$100 for reimbursement of rent paid for November 29 and 30 2016, \$1500 for reimbursement of the rent for December 2016 and \$1500 for reimbursement of the rent January 2017 as the tenant failed to prove the landlord has breached the Act, Regulations and/or tenancy agreement. Further, the tenant left her belongings in the rental unit and has prevented the landlord from taking steps to re-rent the rental unit to a third party.
- h. I dismissed the claim of \$150 for the storage units as the tenant continued to use the storage units.
- i. I dismissed the claim of \$80 for ambulance services as the tenant failed to provide verification of this cost or that it is related to problems in the rental unit.

- j. I dismissed the Tenant's claim of \$150 for the cost to pay JW as the tenant failed to present proof she has incurred this cost.
- k. I dismissed the tenant's claim of \$522 for hotel costs for December 18-21, 2016 as the tenant failed to prove the landlord breached the Act, regulations or tenancy agreement.
- l. I dismissed the tenant's claim of \$300 paid to KH for rent from December 21 to January 1 as the tenant failed to prove the landlord is at fault and failed to provide evidence to prove this claim.

I dismissed the Tenant's claim for repairs or emergency repairs as the Tenant failed to present sufficient evidence to prove the landlord has breached the Act, Regulations and tenancy agreement.

Conclusion:

In conclusion I dismissed the tenant's claim in total as the tenant failed present sufficient evidence to establish that the landlord breached the Act, regulations or tenancy agreement.

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: January 13, 2017

Residential Tenancy Branch