



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR; RP; FF

Introduction

This is the Tenant's Application for Dispute Resolution seeking a monetary award for the cost of emergency repairs; an Order that the Landlord perform regular repairs at the rental property; and to recover the cost of the filing fee from the Landlord.

The Hearing was scheduled to be conducted by teleconference at 10:30 a.m. on March 16, 2017. The Tenant signed into the teleconference, which remained open for 40 minutes. The Landlord did not sign in.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on February 10, 2017, which provided address for the Landlord. The Tenant stated that this was the first time the Landlord had provided an address to the Tenant. The Tenant paid the outstanding rent and sent the Notice of Hearing package and his documentary evidence and a memory stick, by registered mail, to the Landlord at the address provided on the Notice to End Tenancy. That package was returned to the Tenant, unclaimed.

Based on the affirmed testimony of the Tenant, I find that the Landlord has been duly served with the Notice of Hearing documents, pursuant to the provisions of Section 89 of the Act. The Hearing continued in the Landlord's absence.

Issue(s) to be Decided

- Does the Residential Tenancy Act apply to this tenancy?
- Is the Tenant entitled to recover the cost of emergency repairs?
- Should the Landlord be ordered to provide additional repairs?

Background and Evidence

The parties entered into a tenancy agreement on August 21, 2013. A copy of the agreement was provided in evidence. The agreement is entitled "COMMERCIAL LEASE AGREEMENT FOR AN AUTOMOBILE WITH HOUSE/OFFICE COMPOUND". The agreement is for a term of 6 months, "to be renewed and renegotiated in 3 months increments". Rent is \$3,000.00 per month, due on the first day of each month.

The Tenant testified that the parties agreed that the Tenant would be credited \$1,500.00 per month towards rent in exchange for repairs that the Tenant completed on the rental unit, and for which the Tenant had given receipts to the Landlord. The Tenant resides at the rental property.

The Tenant testified that he regularly completed repairs to the rental property until 2015, at which time no further repairs were completed until November, 2016. He stated that the Landlord advised the Tenant that the Landlord did not “feel a responsibility to fix anything more”. The Tenant stated that in November, 2016, the hot water tank failed, flooding the basement, and a leak in the foundation caused further water damage. The Tenant stated that he tried repeatedly to telephone the Landlord at the number the Landlord provided, but the Landlord did not answer his calls. Because of the urgent nature of the required repairs, the Tenant paid for the repairs.

The Tenant stated that he had no address for the Landlord, so he did an on-line search for the Landlord’s address, tied to the telephone number the Landlord provided the Tenant. On January 18, 2017, the Tenant sent the receipts to the Landlord by registered mail to the address that matched the Landlord’s telephone number. The receipts were returned to the Tenant, unclaimed.

The Tenant stated that a section of the roof is now leaking, causing further water damage. The Tenant seeks an Order that the Landlord repair the roof.

The Tenant provided photographs; copies of receipts; a memory stick (including recorded conversations between the Tenant and the Landlord on February 1, 2017, and recorded conversations between the Tenant and an agent of the Landlord’s on February 3 and 7, 2017); and a transcript of some of the conversations.

The Tenant seeks compensation for the cost he incurred making emergency repairs, calculated as follows:

Cost and labour to replace hot water heater	\$1,261.37
Cost and labour to repair foundation, fascia board, and remove and repair leaking roof gutters (including applying waterproof masonry cement; and diverting downspout run-off	<u>\$2,636.17</u>
TOTAL	\$3,897.54

Analysis

- Does the Residential Tenancy Act apply to this tenancy?

Sections 5 and 6 of the Act provide:

This Act cannot be avoided

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58

(1) *[determining disputes]*.

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

{Reproduced as written.}

Notwithstanding the title of the agreement signed August 21, 2013, I find that this is a residential tenancy and therefore the Act applies. The Tenant resides at the rental unit and the Landlord issued a Notice to End Tenancy under the Residential Tenancy Act. Therefore, I accept jurisdiction in this matter.

It is important to note that the tenancy agreement contains many unenforceable clauses, including **but not limited to**:

1. A "collection charge" of 10% of the rent if rent is not paid on the day it is due, contrary to Section 7 of the regulation.
 2. A "collection charge" (in addition to the charge described above) of \$100.00 for each cheque not honoured by a financial institution, contrary to Section 7 of the regulation.
 3. A clause that the Landlord has the right to "immediate peaceful possession of the premises by changing the locks" if the rent "fall(s) in arrears", contrary to Sections 26, 30 and 31 of the Act.
 4. "Tenant covenants and agrees to maintain and repair premises as may be required. Landlord repairs and maintains nothing." This clause is contrary to Section 32 of the Act.
 5. A clause that the Landlord is not "in any way even whatsoever liable or responsible in any way howsoever caused for any damaged caused by anything done or omitted to be done by Landlord", contrary to Section 32 of the Act.
 6. A clause that the Tenant must provide 60 days' notice to end the tenancy, contrary to Section 45 of the Act.
- Is the Tenant entitled to recover the cost of emergency repairs?

Section 33 of the Act provides:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the repairs completed by the Tenant fall within the definition of “emergency repairs” as set out in Section 33(1) of the Act. Based on the Tenant’s undisputed testimony, I find that the Tenant complied with the requirements of Section 33(3) of the Act. I find that the Tenant sufficiently served the Landlord with copies of the receipts for the repairs, by registered mail sent January 18, 2017 and deemed served on January 23, 2017. I find that Landlord has failed to comply with Section 33(5) of the Act. I find that the cost of repairs is reasonable for the scope of the work performed. Therefore, pursuant to the provisions of Section 33 of the Act, I allow the Tenant’s claim in the amount of **\$3,897.54**.

Further to the provisions of Section 33(7) of the Act, the Tenant may **either** deduct this award from future rent to the Landlord, **or** may enforce the enclosed Money Order with respect to any balance then owed to the Tenant by the Landlord.

- Should the Landlord be ordered to provide additional repairs?

Section 32 of the Act requires a landlord to 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.

There was insufficient evidence that the requested repairs to the roof are of sufficient nature to fall under the provisions of Section 33 (emergency repairs); however, based on the affirmed undisputed testimony of the Tenant, and on the balance of probabilities, I find that the repairs are required under Section 32 of the Act.

I hereby ORDER the Landlord to comply with Section 32 of the Act and to have a professional roofer inspect and repair or replace the roof, as required, within 30 days of receipt of this Decision.

If the Landlord does not comply with this repair Order within 30 days of receipt of this Decision, the Tenant is at liberty to make another Application.

The Tenant has been successful in his Application and I find that he is entitled to recover the cost of the **\$100.00** filing fee.

Conclusion

The Tenant is entitled to compensation in the amount of **\$3,997.54** comprised of his monetary award and recovery of the filing fee. The Tenant may choose to **either** deduct this award from future rent due to the Landlord **or** enforce the enclosed Monetary Order in Provincial Court (Small Claims) with respect to any balance still owed to the Tenant.

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: March 21, 2017

Residential Tenancy Branch