



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Elizabeth Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNR, MNDC, OLC, RP, RR

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order in relation to a rent increase - Section 43;
2. An Order for emergency and other repairs - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order for the Landlord's compliance - Section 62;
5. An Order for a rent reduction - Section 65.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that while there are several minor repairs needed to the unit the Tenant only wishes to address three matters at this hearing: the heat, the toilet and the intercom system. Given the Tenant's statement I accept that the Tenant is withdrawing claims in relation to other repairs or matters. The Tenant has leave to reapply on these items if necessary.

The Landlord states that an evidence package containing a written summary of their submission, a condition report, the application and notices to the Tenant was provided to the Residential Tenancy Branch (the “RTB”) on May 4, 2017. It is noted that the only document provided to the RTB on that date by the Landlord was a one page document with copies of mail receipts. The Tenant agrees that it received this package and states that the notices are all the same notices provided by the Tenant in its evidence package. The Landlord requests an adjournment to provide its evidence package. As the condition report and application are not

relevant to the claim for repairs I find that these items are not necessary to resolve the dispute. As the Tenant already provided the copies of the notices, I find that these items are already available for consideration. For these reasons and as the written submissions may be provided orally I find that no adjournment is necessary. I therefore decline the request for an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to repairs?

Is the Tenant entitled to compensation?

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy started on April 20, 2015. Rent of \$870.00 is currently payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit.

The Tenant states that in mid-December 2016 there was no heat in the unit. The Tenant states that they informed the Landlord in the same week. The Tenant states that the Landlord came to the unit without any notice and as the Tenants were not prepared for the entry the Landlord was asked to schedule another time or to provide notice of when they would attend. The Tenant states that the Landlord subsequently failed to return at all. The Tenant states that they bought a space heater to keep the unit warm and then with some investigation on their own they discovered that the heat would only operate on a full blast or not at all and that the thermostat was the problem. The tenant states that the Landlord was informed that the thermostat was the issue but the Landlord still did not attend to inspect or make repairs. The Landlord states that he has no recall of being told about problems with the heat in December 2016. The Landlord states that they only found out on February 8, 2017. The Landlord states that they tried to call the Tenants but never got any answer and that when they went to the door of the unit Tenant JC told them there was no problem. Tenant JC denies telling the Landlord that there was no problem with the heat.

The Tenant states that the intercom system stopped working for them in June or July 2016 and that the Landlord was verbally informed about this problem at the time. The Tenant states that the Landlord has never repaired the intercom. The Tenant states that they have to go down to

the main entrance to open the door to allow persons into the building. The Tenants have small children and when either of them is alone with the children the Tenants face significant challenges in leaving the unit to allow any persons entry to the building and their unit. The Tenant states that Tenant JC was also pregnant until February 2017 and that they were very stressed about how they would be able to let emergency personnel into the building if they were needed. The Tenant claims repairs, compensation and a rent reduction. The Landlord states that they were aware of the intercom problem by February 8, 2017 and that the intercom is old so they have to find parts before they can make repairs. The Landlord states that they want to repair the intercom but that it will take some time to order those parts. The Landlord states that they did try to send someone to look at the intercom in 2016.

The Tenant states that the toilet started to have problems on December 14, 2016 and that after calling the Landlord they sent only a maintenance person who made some repairs. The Tenant states that the maintenance person asked Tenant JC to stick her hand in the toilet to pull out articles as Tenant JC had a small hand. The Tenant objects to this. The Tenant states that after the maintenance person left the toilet still had problems and although they informed the Landlord they were told that they would have to wait. The Tenant states that it was not until January 10, 2017 that the Landlord again sent the maintenance person unannounced and that this person did nothing. The Tenant states that the mother of one of the Tenants finally called the plumber on February 7, 2017 as the Landlord failed to send any plumber to make repairs and it was now urgent given that Tenant JC just had come home with a new baby after having a caesarean section. The Tenant states that the plumber told them that the repairs that should have taken only 10 minutes took much longer because the toilet was "super old" and likely original to the building. The Tenant states that the plumber told them that the toilet requires replacement. The Tenant states that the toilet now works and claims compensation for the cost of the plumber's bill in the amount of \$385.30. The Landlord states that he is not sure of the age of the toilet but that the Tenants caused the toilet to be plugged and that its repair was therefore not the responsibility of the Landlord. The Landlord states that even if the toilet was new the Tenant would have been responsible for the repairs.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards

required by law, and 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 that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 65 of the Act provides that where a landlord has not complied with the tenancy agreement or the Act, an order may be made that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Overall the Landlord's evidence was evasive, tentative and limited. The Landlord also gave contradictory evidence in relation to its awareness of the intercom problem. On the other hand the Tenant's evidence overall was forthright, consistent and persuasively credible. For these reasons I prefer the Tenant's evidence in relation to the heat, intercom, toilet and the Landlord's lack of action on its obligation to maintain the unit.

I therefore find on a balance of probabilities that the Tenant has substantiated that the Landlord failed to provide heat to the Tenants over the winter months in 2016 and failed to inspect or repair the problem with the thermostat. I find that this failure is evidence of the Landlord's negligence however I note that the Tenant has not claimed any compensation for either the loss of heat or the cost of the heater. I therefore only order the Landlord to inspect the thermostat and heating system in the unit no later than May 20, 2017 after providing 24 hours written notice and to provide an inspection outcome report to the Tenant. This report must also include a timeframe for repairs to the thermostat or any other part of the heating system that may be the problem. It is understood that those repairs may not be scheduled for completion during the summer months when the provision of heat is not necessary but the Landlord must ensure that any repairs that are needed to the heat or thermostat must be completed prior to the onset of inclement weather. I caution the Landlord to provide at least 24 hours written notice to the Tenants for any necessary entry.

Given the preference for the Tenant's more credible evidence I find on a balance of probabilities that the Tenant has substantiated that the Landlord failed to provide the Tenant with an operational intercom system since June 2016. Even if the Landlord did not learn about the intercom system until February 2016, and I do not accept this contradictory evidence, sufficient time was available to the Landlord from this period to date to have parts brought in if necessary.

I find therefore that the Tenant has substantiated that the Landlord was negligent and continues to be negligent. I find that the Tenant is entitled to a retroactive reduction in rent for the loss of the intercom. Given the evidence that the Tenants are parents with small children I find that the loss of intercom use is significant and find that the Tenants are therefore entitled to a retroactive rent reduction of \$50.00 per month. This amounts to **\$550.00** for the period July 1, 2016 to May 31, 2017 inclusive.

I also order the Landlord to either repair or replace the intercom by no later than May 30, 2017. Although at the hearing the Landlord was given until May 20, 2017 to make the repairs to the intercom, after further consideration this date has been changed to allow more time. Although at the hearing the Tenants were given leave to reapply for compensation should the Landlord fail to make repairs to the intercom, upon further consideration, I consider this to be unnecessarily onerous on the Tenant. Therefore should the Landlord fail to repair or replace the intercom by May 30, 2017 I find that the Tenants are entitled to a rent reduction of **\$100.00** from June 1, 2017 forward until the intercom service is returned to the Tenants. The deduction is to be made for the first day of each month if the service is not provided before the last day of month prior, i.e., if the intercom is not replaced or repaired by May 30, 2017 the Tenants may deduct \$100.00 for June 1, 2017; if the intercom is not repaired or replaced by June 30, 2017 the Tenants may deduct \$100.00 for July 1, 2017. Should the Tenants disagree with the Landlord on when the repairs are made or whether the reduction should cease, the Landlord may apply for an order stopping the reduction in rent. The Landlord may not end the tenancy for unpaid rent because of this reduction unless the order stopping the reduction has been obtained from the RTB and the Tenant does not thereafter pay the full rent.

Given the preference for the Tenant's evidence, I find that the toilet is beyond 20 years old and more likely the age of the building. Therefore even if the Tenants caused the toilet to be plugged I find that the age of the toilet caused extensive and far greater costs for repairs that would otherwise have been incurred. I also find that the Landlord failed to properly repair the toilet in the first instance and that the Landlord refused to make further repairs leaving the Tenant with ultimate costs for the toilet repairs. As it is not possible to determine what portion of the repairs might have been caused by the Tenant's actions, given the Landlord's negligent attitude towards its responsibilities to make repairs and the loss of a functioning toilet for a period of time, I find that the Tenant is entitled to compensation in the total amount of the repair

bill for **\$385.30**. This amount includes compensation to the Tenant for the loss of use of a functioning toilet.

The Tenant is entitled to a total compensation of **\$935.30**. The Tenant may deduct this from future rent payable in full satisfaction of this entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$935.30**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I order the Tenant to deduct \$100.00 per month from the rent commencing June 1, 2017 should the intercom not be repaired or replaced by May 30, 2017; and thereafter as set out above.

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: May 12, 2017

Residential Tenancy Branch