



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, ERP, LRE, RR, FF

Introduction

This hearing dealt with the tenant's 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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- 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 to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidence. The landlord confirmed receipt of the tenant's application package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the reduced value of the tenancy arising from the landlord's failure to make repairs?

Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement?

Should the landlords be ordered to make repairs or emergency repairs to the rental unit?

Should the landlords be ordered to provide services or facilities required by law?

Is the tenants entitled to reduce the amount of monthly rent for repairs agreed upon but not provided by the landlord?

Is the tenant entitled to recover the filing fees for this application from the landlord?

Background and Evidence

There was a previous hearing regarding this tenancy on April 27, 2017 under the file number identified on the first page of this decision. At that hearing the parties in attendance entered a final and binding settlement agreement which provides that no later than May 30, 2017, the landlord will repair:

- Three electrical outlets in the living room
- Two electrical outlets in the kitchen
- Three elements on the stove
- The stove oven
- Back door
- Rat infestation and rat holes
- Bathroom shower leak
- Dryer vent

The parties confirmed that none of the agreed upon repairs have been completed.

The landlord testified that he purchased the rental property on May 15, 2017 and is aware of the agreement made at the earlier hearing. The landlord said that he has had contractors examine the rental unit and has been advised that the tenant must vacate the unit in order for renovations to be done.

The tenant testified that the landlord or any contractor hired by the landlord begun to perform the repairs. The tenant stated that the deficiencies in the rental unit have

remained the same or have worsened since the previous hearing. The tenant testified that she is unable to make full use of the rental unit and has altered her daily routines to accommodate the deficiencies. The tenant said that the monthly rent for this tenancy is \$880.00 and she has been paying the full rent despite not being able to make full use of the rental unit.

The tenant seeks a monetary award of \$2,364.40 for the following items:

Item	Amount
Hotplate Purchase	\$30.01
Replacement Fridge	\$159.39
Reduction in Tenancy Value (4mths x \$400.00)	\$1,600.00
Recovery of Security Deposit	\$375.00
Loss of Property	\$200.00
Total Monetary Order	\$2,364.40

The tenant submitted into written evidence copies of receipts for the items she said she needed to purchase as the repairs were not completed.

Analysis

I find that the application for an order that the landlord make repairs was already conclusively settled in the earlier hearing with a full and final agreement between the parties. Therefore, I find I do not have the jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act and the tenant's application for a repair order is dismissed.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the undisputed evidence of the parties that the landlord has not made any repairs to the rental unit. I do not find the landlord's testimony that repairs cannot be completed while the tenant resides in the rental unit to be convincing or realistic. I do

not find that the nature of the repairs agreed to by the parties in the previous hearing require vacant possession of the rental unit or would involve major disruptions. I find that the landlord has violated the terms of the settlement agreement of April 27, 2017 without a convincing reason for doing so. As a result of the landlord's violation the tenant has incurred some losses.

I accept the tenant's undisputed evidence that she needed to purchase a hotplate to cook as the landlord did not repair the stove. I accept the tenant's evidence that the cost of the hotplate is \$30.01.

I find that there is insufficient evidence in support of the other portions of the tenant's claim. I find that there is insufficient evidence to find that the replacement of the refrigerator was caused by the landlord's violation. Similarly, I find there is insufficient evidence that the items the tenant says require replacement were lost due to the landlord. Nor is there sufficient evidence of the value of the items. This portion of the tenant's monetary claim is dismissed.

As this tenancy is ongoing I find it premature to issue an order regarding the security deposit. This portion of the tenant's application is dismissed with leave to reapply.

Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that failure of the landlord to comply with the repair order has resulted in a loss of value of the tenancy and that the tenant is entitled to a monetary award. I do not find the landlord's testimony that the repairs have not been performed due to the tenant's continued occupancy to be compelling or supported in the evidence. I limit my findings to those repairs that were agreed to by the parties at the earlier hearing.

The tenant suggests a rent reduction of \$400.00 is appropriate. I find there is insufficient evidence to support a reduction of that amount, nearly half of the monthly rent. The tenant has testified that she continues to reside in the rental unit. The nature of the deficiencies are such that the tenant is constantly aware of the need for repairs and must alter some of her routines such as using alternate access routes but not so severe that the rental unit is uninhabitable. I accept the tenant's evidence that the deficiencies center on kitchen appliances limiting the tenant's ability to prepare meals. The deficiencies are unavoidable in the tenant's daily life but are surmountable.

I find that an appropriate amount for the loss in value of this tenancy resulting from the landlord's failure to complete the agreed upon repairs is \$150.00, approximately a quarter of the monthly rent for this tenancy.

In accordance with section 65(1)(f) of the Act, I issue a retroactive monetary award in the tenant's favour in the amount of \$750.00 {i.e., 5 months (June 1, 2017 to October 31, 2017) @ \$150.00 per month = \$750.00} to compensate the tenant for the loss in value of her tenancy stemming from the landlord's failure to abide by the terms of the settlement agreement.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by October 31, 2017, I order that the monthly rent for this tenancy for November 2017, is reduced by \$200.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs. **By way of example** and so as to ensure that there is clarity regarding the implementation of my decision, **should the landlord not complete repairs until mid- January 2018**, my order would lead to the following monthly rent payments from November 1, 2017 until February 1, 2018 for this tenancy:

Month	Monthly Rent
November 2017	\$680.00 (\$880.00 - \$200.00 = \$680.00)
December 2017	\$630.00 (\$880.00 - \$250.00 = \$630.00)
January 2018	\$580.00 (\$880.00 - \$300.00 = \$580.00)
February 2018	\$880.00

Should a dispute arise as to the extent to which the repairs agreed to in the settlement agreement have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

As the tenant has been successful in her application, I also find that she is entitled to recovery of her filing fees from the landlord. This results in a total monetary award of

\$880.01 for retroactive rent reduction, damages for the cost of a hotplate and recovery of the filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$880.01 under the following terms, for retroactive rent reduction and recovery of the filing fee:

Item	Amount
Rent Reduction June, 2017	\$150.00
Rent Reduction July, 2017	\$150.00
Rent Reduction August, 2017	\$150.00
Rent Reduction September, 2017	\$150.00
Rent Reduction October, 2017	\$150.00
Hotplate Cost	\$30.01
Filing Fees	\$100.00
Total Monetary Order	\$880.01

To implement the monetary award of \$880.01, I order that the tenant may reduce the amount of her next monthly rental payment to the landlord by that amount. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$880.01.

The tenant is 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.

In the event that the landlord does not complete all of the listed repairs agreed to during the previous hearing by October 31, 2017, I order that the monthly rent for this tenancy for November 2017, is reduced by \$200.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's

reduced rent until such time as the landlord has applied for and obtained an order to modify the reduced rent from an arbitrator appointed under the *Act*. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

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 16, 2017

Residential Tenancy Branch