



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order for the landlord to make emergency repairs for health and safety reasons pursuant to section 33; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Are the tenants entitled to an order compelling the landlord to make emergency repairs?
Are the tenants entitled to a monetary award for loss arising out of this tenancy?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on October 1, 2011 and is ongoing. The tenants are obligated to pay \$705.00 per month in rent in advance on the first of each month. BP testified that they are seeking a monetary order of \$17545.29 to cover the costs of boiling water, buying bottled water and the gas to drive to buy the bottled water. BP testified that they have been without potable water since they moved

in to the unit. BP testified that the landlords were aware of this issue since 2014 but didn't do anything about it. BP advised that the water issue has now been corrected as of today's hearing. BP testified that the electrical heating in the unit needs to be repaired as the "wiring is wrong". LP testified that they seek a repair order to have the electrical wiring inspected and repaired.

The landlords gave the following testimony. CK testified that she disputes the tenants' monetary claim in its entirety. CK testified that the tenants did not advise her of any issues with the water until several days before the hearing. CK testified that the tenants haven't mitigated the loss under the Act as required and have not provided receipts to support their claim. RH testified that he was present when an electrician inspected the wiring in April 2017 and found all was in order. RH testified that the heating is working as it should.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenants claim and my findings as follows.

Monetary Order for lack of Potable Water - The tenants seek \$17545.29 to cover the costs of boiling water, buying bottled water and the gas for the vehicles to drive to pick up the bottled water. BP testified that this was the "best estimate" and that she didn't have any receipts to support her claim. The landlords disputed that they were aware of this issue and only were advised on August 31, 2017. The landlords testified that the

tenants may have a water purity report from 2014 but it was not provided until this hearing. CK submits that the tenants have failed to mitigate and that this claim should be dismissed. I find that the tenants have not provided sufficient evidence of mitigating and minimizing the loss by not advising the landlord as soon as possible. Also the tenants do not have sufficient supporting documentation for the amount as claimed. The tenants have failed to satisfy me that they have provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the Act. Based on the insufficient evidence before me, I must dismiss this portion of their application.

Electrical Repair – In BP’s own testimony she advised that “when you turn the heat on it comes on”. BP testified that she would prefer to have heat in some rooms and not all the rooms at the same time. I find this to be a personal preference and not one that requires a repair order. In addition the tenants were unable to provide sufficient evidence that the electrical system required repair. Based on the insufficient evidence before me, the disputing testimony of LP and on a balance of probabilities, I dismiss this portion of their application.

The tenants have not been successful in this application.

Conclusion

The tenants’ application is dismissed in its entirety.

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 25, 2017

Residential Tenancy Branch