



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, MNDC, FF

Introduction

On September 1, 2017, the Tenant applied for dispute resolution seeking the following:

- an order to make repairs or emergency repairs to the rental unit.
- For money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 1, 2016, as a month to month tenancy. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 was paid by the Tenants to the Landlord.

The rental unit is a self-contained suite located on the lower floor of a house that is approximately six years old.

The Tenant is seeking repairs and compensation as follows:

Heat	\$90.00
Drains	\$50.00
Fridge	\$300.00

Ants	\$15.00
------	---------

Heat

The Tenant testified that she noticed the heat was finicky when she moved in to the rental unit. She submitted that she had to turn the heat on fully in order for the heat to come on. She testified that the room temperature is either extremely hot or it is off. She testified that the heat comes from the floor. She testified that the tenancy agreement requires her to pay 25% of the hydro and gas costs.

The Tenant testified that she let the heat issue slide during the spring and summer months because the Tenants did not need to use the heat much. She submitted that as the end of summer approached she contacted the Landlord about the heat issue and the Landlord attended to look at the thermostat.

The Tenant testified that she is seeking compensation for living with the issue for six months from December to May 2017. The Tenants are seeking \$15.00 per month which is approximately 25% - 50% of their hydro bill cost.

In response, the Landlord testified that because the heating comes from the floor, the Tenants need to turn the thermostat up and wait approximately six hours for the unit to heat up. The Landlord testified that the Tenants have their own thermostat that is separate from the other rental units in the house.

The Landlord testified that he had a professional come to look at the heating system and that it working properly. The Landlord had the thermostat in the Tenants unit replaced to ensure there was no problem with it.

The Landlord submitted that he is not in agreement to pay the Tenants \$90.00 for a loss of heating because there is nothing wrong with the heating.

At the hearing, the Landlord agreed to provide the Tenants with an electric heater.

Drain

The Tenant testified that the kitchen sink gets clogged on a regular basis. She testified that it clogs every third time she uses it. She testified that she reported the issue to the Landlord and he did not respond immediately, but did attend with a snake to clear the drain. She testified that the Landlord told her he found food in the drain.

The Tenant testified that she is very careful to prevent food going into the drain, and that problem with the drain has continued after the Landlord used the snake.

The Tenant wants a qualified person to come and inspect the drain and is seeking compensation of \$50.00 for the hassle of plunging the sink.

In response, the Landlord submitted that the problem with the drain is due to the Tenants putting food in the drain. The Landlord is not in agreement to have someone look at the drain.

Fridge

The Tenant testified that the Landlord replaced the fridge prior to the hearing, so a repair order is no longer required. The Tenant is seeking \$300.00 for food that spoiled during the two month period of time that it took for the Landlord to deal with the issue.

The Tenant testified that the fridge leaked water which would seep into her food and spoil food.

In response, the Landlord testified that he is not in agreement to pay compensation to the Tenant. He testified that the Tenants did not close the freezer door in the fridge properly which causes the freezer to defrost and drip water.

The Landlord testified that there is nothing wrong with the fridge and he has put the fridge into another rental unit and there is no problem with it.

Ants

The Tenant testified that she noticed lots of ants in her bedroom and she asked the Landlord to deal with the problem. She submitted that she asked the Landlord if she could buy an ant control product and get reimbursed; however, the Landlord did not agree and said he would attend the unit to take a look in a week.

The Tenant purchased an ant control product and is seeking to be reimbursed the \$15.00 cost.

In response, the Landlord testified that the ants are seasonal and come out during hot weather. He submitted that every house has them.

At the hearing, the Landlord agreed to reimburse the Tenant the amount of \$15.00.

Analysis

Section 32 of the Act states that 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 27 of the Act states a Landlord must not terminate or restrict a service or facility if the service or facility is essential to the Tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Section 33 of the Act states that “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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Heat

The parties agreed that heat is provided to the rental unit through the flooring. I find that the Tenants have control of the heat by use of a thermostat within the rental unit and that the heat comes on when the Tenants turn up the thermostat.

The parties did not provide a copy of a tenancy agreement or provide testimony that indicates the level or amount of heating to be provided. The Tenant has provided no evidence of health, safety and housing standards required by law in regard to the provision of heat.

I find that the provision of heat to the rental unit from the start of the tenancy has not been altered in any way. As such, pursuant to Section 27, I find the Landlords have not restricted the provision of heat during this tenancy. As such, I find the Landlord has provided heat to the rental unit sufficiently to comply with their obligations under section 32 of the Act. Accordingly, I dismiss the Tenant’s claim for \$90.00 for restriction of heat to the rental unit.

During the hearing the Landlord agreed to provide the Tenants with an electric heater. I order the Landlord to provide an electric heater to the Tenants within 30 days of this decision.

Drain

I accept the Tenant’s testimony that the sink drain continues to get clogged after the Landlord cleared the drain using a snake. I order the Landlord to have an inspection of the drain within 30 days of the date of this Decision using a qualified person, and to repair any problem found with the drain.

The Tenants claim for compensation of \$50.00 is dismissed. If the Landlord fails to attend to the inspection / repair of the drain, the Tenants can reapply for compensation.

Fridge

The Tenants claim for compensation for spoiled food is dismissed. There is insufficient evidence from the Tenants that the fridge was defective and there is insufficient evidence from the Tenants that they suffered a loss and they did not establish the value of the loss.

Ants

As agreed to by the Landlord in the hearing, I order the Landlord to pay the Tenants \$15.00 for the cost of the ant control product.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in their application, I order the Landlord to repay the half of the \$100.00 fee that the Tenants paid to make application for dispute resolution.

The Tenants have established a monetary claim in the amount of \$65.00 comprised of \$50.00 for half the filing fee and \$15.00 for the ant control.

I authorize the Tenants to deduct the amount of \$65.00 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful. I order the Landlord to inspect the kitchen drain pipe within 30 days of the date of this decision, and to provide the Tenants with an electric heater.

I grant the Tenants the amount of \$65.00. I authorize the Tenants to deduct the amount of \$65.00 from one (1) future rent payment.

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: November 24, 2017

Residential Tenancy Branch