



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON CONSTRUCTION MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC RR

Introduction

Both parties attended the hearing and gave sworn testimony. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) For compensation for damages due to the landlord's violation of sections 32 and 33 of the Act; and
- b) Aggravated damages for the landlord's gross negligence and treatment that caused significant harm to the tenant.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord did not maintain the property contrary to sections 32 and 33 of the Act? Has he proved that he is entitled to rent rebate/compensation for suffering due to the negligence of the landlord and to further aggravated damages?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced June 2008 and ended on July 31, 2016. Rent was \$600 a month and no security deposit was paid. The landlord's agent explained that most of the events occurred under the previous landlord (included in the style of cause) and he was only involved since March 2017. However, he said he has spoken to previous management and reviewed the records and is satisfied he can address the issues.

The tenant lived in a basement of the coach house and said things were fine for about 5 years until some new management took over. Then nothing was repaired. He said he did not report any problems in writing to management but complained to a maintenance worker in 2015 about the significant problems with his unit. He also said he told management of his problems about every six months during maintenance inspection.

He said he endured infestation of rats, mould, ivy growing into his living room through the wall and no fire detectors and broken plumbing in his bathroom and kitchen.

In evidence are many photographs showing extremely poor living conditions and illustrating his statements. He requests a rent refund of \$6000 from September 2015 to July 2016 for this lack of repair and negligence of the landlord.

In addition he claims aggravated damages for the degrading and inhuman treatment he suffered from the landlord. For example, he came home from hospital in June 13, 2016 to find the septic had backed up and his unit was full of raw sewage. He reported it to the manager and she told him to clean it up himself. His feet were in bandages and he had limited mobility yet was left to deal with this. Furthermore, the landlord was aware of his leaking toilet and did nothing which forced him to keep a bucket behind it and somehow empty the bucket frequently despite his limited mobility. The tenant pointed to the medical records in evidence showing he was hospitalized 12 times with leg infections while living in these conditions and was told the persistence of the infections was due to his living conditions. He said he has had no infections since July 31, 2016 when his tenancy ended. Again, when he showed the huge rat infestation, the manager handed him a rat trap and told him to deal with it. The tenant's advocate pointed out that a Good Samaritan had given him a lift one day and was appalled when she saw his living conditions. Her letter is in evidence. She helped him out immensely since May 2016.

The landlord's agent said he does not minimize the bad conditions of the rental unit. The new landlord did not inspect the coach houses when they took over for they intended to demolish them. He said the records show that the tenant's last rent payment was \$150 in April and May and he had \$4460 in rent arrears. The tenant said he had a nominal income from 2013 to 2016 and withheld his rent in protest due to the terrible living conditions. In a prior hearing, the landlord received an Order of Possession effective July 31, 2016 but did not claim the rental arrears.

The landlord's agent also pointed out that his records show that the unit could not be inspected in 2015 and 2016 for the personnel could not gain entry. The tenant denies this but he did agree that he had dismantled the fire alarms for they were going off all the time for no reason. He said they were never fixed. The agent noted from the records that pest control was called for other units and attended immediately but there is no record of this unit requesting it. The agent said he did not understand why the manager would not have contacted the necessary repair personnel as the tenant had worked for the landlord for a period of time until disabled and reportedly had a good

relationship. The tenant agreed he never put anything in writing and did not reach out to anyone else.

Included with the evidence are statements from the tenant, a Good Samaritan and advocate, many photographs, medical reports and a USB. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 32 of the Act provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) Complies with the health and 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.

Paragraph 32(1) (b) above is intended to take into account the fact that older units will not and are not expected to be of the same standard as a newly constructed unit and that the unit must only meet the standard of being suitable for occupation and comply with health, safety and housing standards required by law. For these reasons, older units tend to rent for much less than newer units. However, I find the weight of the evidence is this basement unit of the coach house unit did not comply with health, safety and housing standards as it was infested with rats, the toilet was leaking and raw sewage was on the floor from septic overflow.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the landlord violated sections 32 and 33 of the Act by not making necessary repairs. However, I find the evidence is that the tenant failed to mitigate his damage by making written requests to management and/or getting other authorities involved. Also, regarding the value of the loss, I find there is a problem. The tenant testified he was with holding rent in protest and the manager's agent testified that the tenant was \$4460 in arrears when the tenancy ended. The purpose of a damage award is to put the person in the same position as if the contract had not been carried out. I decline to refund rent that was not paid. The tenant claimed a refund of 10 months rent or \$6,000. Deducting his arrears from this amount, I find him entitled to a refund of \$1540 in rent which the weight of the evidence indicates was all he paid in rent for that time.

In respect to the tenant's claim for aggravated damages, I find Policy Guideline 16 addresses criteria for such damages. These damages are an augmentation of an award of compensatory damages. They are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. I find in this case the manager's deliberate or negligent behaviour in not addressing the significant rat infestation and neglecting to send help to repair and clean up the septic tank spill and persistent toilet leak contributed significantly to the tenant's poor health, suffering and humiliation. I find the tenant entitled to aggravated damages. I find an award of \$2,000 is reasonable considering all the circumstances of the tenant's lack of written communication to other of the landlord's staff who may have alleviated his problems if given the opportunity.

Conclusion:

For the reasons above, I find the tenant entitled to \$1540 rent refund and \$2,000 for aggravated damages for a total award of \$3,540. His filing fee was waived.

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 09, 2017

Residential Tenancy Branch