



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP RP RR OLC MNDCT FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the unit, site or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing, the tenant advised that she has vacated the rental unit and withdraws the following claims:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the unit, site or property; and
- an order that the landlord comply with the *Act*, regulation or tenancy agreement.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically a reduction and reimbursement of rent paid due to loss of quiet enjoyment of the rental unit and inconvenience?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2017 and expired on February 28, 2018. Rent in the amount of \$1,250.00 per month was payable on the 1st day of each month, however the parties entered into another tenancy agreement on a month-to-month basis effective January 1, 2018 for rent in the amount of \$1,300.00 per month. The tenant moved out on March 11, 2018.

On September 15, 2017 the landlord collected a security deposit from the tenant in the amount of \$650.00 as well as a pet damage deposit in the amount of \$50.00. The landlord returned \$590.00 to the tenant, and the tenant agreed to the deductions made for carpet cleaning and other issues. The rental unit is a basement suite and the upper unit was also tenanted, and the neighbouring tenant moved in at the same time, but moved out earlier.

The rental unit required multiple repairs and the landlord or contractors had to enter more than 28 times to make repairs, including fixing the toilet.

On October 13, 2017 the tenant complained about having no heat, and because the baseboard heater in the bedroom was too close to the tenant's bed, the tenant had to call friends to help take apart and move the bed so the landlord could replace the heater.

On October 18, 2017 the tenant arrived at home after work to a flood. The landlord arrived the next day to fix it and brought a fan, but it was always cold in the rental unit. There was a baseboard heater in the bedroom and the rest of the rental unit was heated with a furnace but the thermostat control was in the upper unit. The tenant told the landlord that the fan was too cold, and the tenant stayed elsewhere until October 22. By then the carpet was half dry but the smell was too bad in the living room. The landlord brought in a carpet cleaner on November 2 and then the tenant had to wait for

the carpet to dry before staying there. Text messages exchanged between the parties about the tenant staying elsewhere have been provided as evidence for this hearing.

The tenant complained about lack of heat several times up until November 27. The landlord organized replacement of the baseboard heater on November 28 and it was repaired on December 2, 2017. The heat was not coming through from the upper unit even when the thermostat was turned up by the neighbouring tenant. The furnace was also repaired on December 2, 2017.

When the tenant and the neighbouring tenant complained to the landlord about the furnace that wasn't working, the landlord had her mother take over as property manager. However the tenant was inconvenienced by setting up and rescheduling the property manager picking up rent.

The tenant further testified that the landlord arrived 3 times about the washer not working. The plumber called by the landlord is the brother of the landlord and the tenant had to wait until he was finished his work at 6:00 or 7:00 p.m., and the tenant wasn't urgent enough. Then he said it was fixed, but it wasn't and then broke entirely. When it was removed, it left a hole in the bathroom wall leaving a plumbing issue. On February 14, 2018 the tenant heard from the landlord that the washer and plumbing would be done, but would take a day to do the plumbing and another day to install the washer. The landlord discounted \$50.00 off rent for February, 2018, however the tenant had to pay \$75.00 per week to do so outside of the rental unit; the tenant's work requires clean clothing for working out and having laundry facilities is necessary.

The tenant has also provided a type-written letter which states, in part that the tenant had to ask friends to stay at their place or use their washing machine more than any time in her life, and that dealing with this tenancy has caused lack of sleep, sickness and missing work. It also describes numerous entries by the landlord's mother who became an agent for the landlord during the tenancy. Also provided are copies of numerous text messages exchanged between the tenant and the landlord or the landlord's agents.

The tenant gave the landlord written notice to end the tenancy by email on February 15, 2018 effective March 11, 2018. A letter from the neighbouring tenant has also been provided as evidence, who moved out at the beginning of February, 2018 for the same reasons the tenant left.

The tenant claims \$400.00 per month for inconveniences and loss of quiet enjoyment of the rental unit and stress due to the landlord or repair persons entering every week, as well as for moving expenses that the tenant would not have incurred so soon.

The landlord's agent is the landlord's husband and testified that everything the tenant mentioned was repaired in a reasonable time.

The primary source of heat in the rental unit is from the furnace and the landlord's agent identified that it was functioning properly, however the baseboard heater wasn't working. The tenant was asked to move the bed and notified the landlord that it was done on November 21st. The landlord asked to arrive on the Friday following, but the tenant said no, and the following Monday was negotiated. Rent was discounted by \$100.00 for October for the inconvenience of the broken heater.

The landlord's agent also assessed the furnace and damper vents which were opened up more to get more air flow. The landlord didn't hear about it again from the tenant until later in March. The landlord's agent attended with a thermometer gun and was receiving an average temperature of 19 degrees. The baseboard heater in the bedroom was set at 15 degrees, but could be set at 30 degrees; it wasn't being used by the tenant.

On December 1, 2017 the landlord's agent heard about water on the floor which appeared to be from the washing machine. The landlord had a plumber who fixed it the next day and found coins and crud from pockets had jammed the pump. It was from normal use and a quick fix. On January 19, water on the floor was again reported and the following day the same plumber attended to see if it was the same problem. It happened again on the 22nd, and the landlord's agent and plumber went back the next day and found that a hole had worn through a hose. It took 4 days to repair after trouble shooting; it was best to remove it and return it after the repair rather than going back into the rental unit again to make the repair once the part was received. It took 15 days to get installed, and the landlords reduced rent by \$50.00 for February, 2018. It was functioning on February 14, 2018.

The landlord's agent further testified that due to a heavy rain, water seeped in under the door of the rental unit. The landlord cleaned out the drain and brought a dehumidifier and regular size household fan to the rental unit. It was not a total flood, but about a 3 X 3 foot area, and although the landlord's agent agrees the tenant was inconvenienced, the landlords worked as fast as they could. The tenant left windows open to help with ventilation.

The tenant only paid \$800.00 for March, 2018 rent, and moved out March 11, 2018 without giving a month's notice as required.

Analysis

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a landlord to provide and maintain rental premises in a state of decoration and repair that makes it suitable for occupation by a tenant, and requires a landlord to provide quiet enjoyment, freedom from interference.

The tenant seeks recovery of \$400.00 per month of the \$1,250.00 per month rental amount for the landlord's breach of the *Act*, testifying that repairs during the tenancy resulted in 28 entries by the landlord or repair people. That would equate to about 4 or 5 times per month. The landlord's agent did not agree or dispute that, but was not the only agent of the landlord dealing with the tenancy. If the landlord had complied with the *Act* by providing the rental unit with heat and laundry facilities that functioned properly,, it should not have been necessary to enter the rental unit more than about once per month.

I have read all of the text messages and other material provided by the parties, and I am satisfied that the tenant has established that numerous entries and repairs were required and the time and inconvenience to do so caused the tenant to suffer the stress described unnecessarily. The lack of heat and the number of times the tenant had to deal with it or be inconvenienced over the winter months is not acceptable, and I find that the tenant has established that the tenancy was devalued as a result. Laundry facilities were to be included in the rent as well, which was not provided entirely. The landlord's agent testified that everything mentioned by the tenant was fixed in a reasonable time, but that is an opinion of the landlord's agent that is not shared by the tenant.

In the circumstances, I find that the tenant has established elements 1, 2 and 4 in the test for damages.

The tenant resided in the rental unit from October 1, 2017 until March 11, 2018 which is almost 6 months, and the claim of \$400.00 per month would amount to monetary

compensation of \$2,400.00, and would effectively reduce rent to \$850.00 per month. I find that to be excessive, and considering the evidence, I am satisfied that rent ought to be discounted by \$250.00 per month for 6 months, or \$1,500.00 inclusive.

The parties agree that the tenant was reimbursed \$50.00 for loss of washing machine facilities and the landlord's agent testified that the tenant was reimbursed \$100.00 for inconvenience of the broken heater, which the tenant denies. However, I am also satisfied, considering the evidentiary material of the landlord that the tenant was discounted \$100.00 for October's rent. The parties also agree that the tenant took it upon herself to reduce rent payable for March, 2018 by \$350.00, which is not sanctioned by the *Act*. As such, I find that, the tenant has been discounted a total of \$500.00 which includes the unpaid rent for March, 2018.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant as against the landlord in the amount of \$1,100.00. ($\$1,500.00 - \$500.00 = \$1,000.00 + \$100.00 = \$1,100.00$)

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,100.00.

This order is final and binding and may be enforced.

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: April 19, 2018

Residential Tenancy Branch