



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDCT, OLC

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order for regular repairs, pursuant to section 32.

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

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on September 18, 2018. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on September 23, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Landlord's Name

The landlord testified that he was personally named as the respondent in this proceeding; however, a corporation, of which he is a shareholder, is the correct legal landlord. The landlord testified that he had authority to speak on behalf of the corporate landlord. Pursuant to section 64 of the *Act*, I amended the application to state the correct landlord.

Preliminary Issue- Legislation

The landlord testified that the tenant originally applied under the *Manufactured Home Park Tenancy Act*; however, the correct *Act* to make this application is the *Residential Tenancy Act*, as the tenants rent the manufactured home from the landlord. Pursuant to section 64 of the *Act*, I amend the tenant's application to be made under the *Residential Tenancy Act*.

Despite the errors in the tenants' application, the landlord agreed to proceed with tenants' application and to have the application heard on its merits.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Are the tenants entitled to an Order for regular repairs, pursuant to section 32 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy is currently ongoing and monthly rent in the amount of \$418.00 is payable on the first day of each month.

Both parties agreed to the following facts. On Friday August 24, 2018 the septic system in the tenants' manufactured home backed up into the sinks, toilets and washing machine. The tenants verbally informed the onsite manager of the issue. The onsite manager immediately attempted to get a plumber to attend at the subject rental property. The onsite manager made 10-15 telephone calls but was unable to get a plumber to attend at the property until Saturday, August 25, 2018.

Both parties agreed to the following facts. A plumber attended at the subject rental property on Saturday August 25, 2018 but was unable to correct the problem as heavy machinery was required to dig up the damaged sewer line.

The tenant testified that she spent 1.5 hours on Saturday August 25, 2018 cleaning fecal matter out of all the sinks and toilets in the subject rental property as well as the washing machine.

Both parties agreed to the following facts. On Monday, August 27, 2018 the required machinery was brought to the subject rental property and a heavy machine dug down to the broken sewer line allowing for its repair. On Tuesday, August 28, 2018 the plumber was able to fix the damaged sewer line.

The tenants testified that they were unable to reside in the subject rental property due to the foul sewage smell and lack of running water. The tenants spent four nights, from Friday August

24- Tuesday, August 28, 2018 at a hotel. The tenants testified that they did not have rental insurance. The tenants are seeking reimbursement from the landlord for their accommodation and restaurant charges for the four nights they were unable to reside in the subject rental property. In support of this, the tenants entered into evidence a combined hotel and restaurant bill in the amount of \$547.73. The tenants are also seeking reimbursement for the cost of cleaning supplies in the amount of \$4.47. A receipt for the cleaning supplies was entered into evidence.

The landlord testified that he did everything in his power to have the sewage back up fixed as soon as possible. The landlord testified that there is only one plumber in the small town in question and that the landlord personally called the plumber to see if the plumber could attend at the subject rental property any sooner but that the plumber was working on a different project and was not available.

Analysis

Section 67 of the *Act* states that 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the following four-point test must be proven by the party claiming damages:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the Act guides the tenant's and landlord's obligations to repair and maintain a rental property.

Landlord and tenant obligations to repair and maintain

32 (1) 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.

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Act Regulation – Schedule; Repairs 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

In this matter, I find the above legislation effectively states a landlord is responsible to make repairs when a request for repairs is made to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards. I find the above legislation also largely addresses that they must keep the building and its properties in a condition that makes it reasonably comfortable to live in.

I find that landlord immediately sought to repair the damaged sewage line at the subject rental property and arranged for a plumber attend at the subject rental property as soon as was practicable in the situation. I find that the landlord has not breached section 32 of the *Act* or section 8 of the *Regulation*. The tenants did not claim that the landlord breached the tenancy agreement, nor do I have any evidence before me which would indicate that the landlord breached the tenancy agreement. I therefore find that tenants' have not proven on a balance of probabilities that the landlord breached the tenancy agreement.

As stated above, in order for a party to be successful in a claim for monetary damages, the party must prove, on a balance of probabilities, that the other party failed to comply with the *Act*, regulation or tenancy agreement. As I have found that the landlord did not breach the *Act*, regulation or tenancy agreement, I find that the tenants have not met the first step of the four-point test. I therefore find that the tenants are not entitled to monetary compensation from the landlord.

The tenant testified that the sewage problem was repaired on August 28, 2018; I therefore decline to make a repair order as the problem has been fixed.

I find that the landlord complied with the *Act* in quickly having the sewage problem fixed, I decline to Order the landlord to comply with the *Act* because I have found that the landlord has not breached it.

Conclusion

I dismiss the tenants' application, without leave to reapply.

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 30, 2018

Residential Tenancy Branch