



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPICE HOUSE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RR MND MNDC MNSD FF

Introduction:

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2: 25 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. on May 9, 2019. The tenant attended the hearing and gave sworn testimony. She was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that her son served the Application for Dispute Resolution personally to the landlord's business. She said her son took a video or photograph of the service but she was ill and could not put it into evidence and her son was at work and could not attend the hearing to give testimony. I find the landlord was served pursuant to section 89 of the *Residential Tenancy Act* (the Act)

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order for \$17,084.26 pursuant to Sections 7, 32, 33 and 67 for damages suffered due to lack of maintenance by the landlord, for lack of basic services, for pain and suffering, and for reimbursement for an emergency repair;
- b) To obtain a refund of the security deposit; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement? Are they entitled to recover compensation for an emergency repair and the filing fee?

Background and Evidence:

The tenant attended the hearing and was given opportunity to be heard, to present evidence and to make submissions. She stated the tenancy commenced August 1, 2015 in this basement suite. Rent was \$800 a month plus laundry and utilities. She paid a security deposit of \$375. The tenant vacated on March 31, 2017 and supplied her forwarding address in writing to the landlord together her rent cheque at the end of February 2017 and another letter in April 2017 requesting the return of her security deposit. A copy of her letters is enclosed as evidence.

The tenant said she suffered with electrical problems and lack of heat and made many complaints to the landlord. She was often unable to cook and her son had to do homework by candlelight for the electrical breaker panel was in the landlord's unit and he usually came home late. She had no access to it and had to wait for him to reset it. The breaker usually tripped if she tried to use the stove and anything else. So they were frequently without lights in this dark basement, about 2- 3 times a week. The tenant said letters were sent to the landlord December 15 and 16, 2016 and January 25, 2017 about parking problems, mold, cleaning and a mouse problem that was escalating. She noticed mice in November 2016 and tried to get the landlord to do something about it. She finally hired an inspector herself in January 2017 and he noted that the sink cabinets had to be sealed where the pipes entered, both rooms have chew holes at the baseboard to enter the rooms, wiring holes need to be filled behind the stove, entry points are found outside such as the window well and the garage door also has entry points. The tenant paid \$136.50 for this service (invoice provided dated March 2, 2017) and requests reimbursement. The tenant provided many photographs showing the damage done by the mice to her clothes and bedding. She also paid for mouse traps \$37.81.

A letter dated January 8, 2017 was written by a law firm and sent to the landlord outlining the problems with the electrical system and the heating system. It stated that the tenant endured the winter of 2015/2016 with no heat and the heating system was not fixed until December 2016. The tenant said the basement was cold, with tile floors so some heat was needed even in summer months. The letter noted the tenant had made numerous complaints without result. However, I note that it did not mention the mouse problem. The tenant said the letter had been written as the landlord was denying her parking and attempting to force her to leave without Notice to End her tenancy. The letter pointed out to the landlord that legal notice was required. The landlord never gave her formal Notice but she gave notice herself dated February 28, 2017 that she would vacate on March 31, 2017 and she did.

There were also two floods and sewage backed up; the tenant had to use her towels and clean it up herself. The landlord never came but sent his son. The son treated her as of no account and just laughed at her, she said.

The tenant claims as follows:

1. \$136.50 for mouse inspection
2. \$613.48 moving expenses because "he evicted me".
3. \$157.50 cleaning, sanitizing, carpet due to mice infestation
4. \$131.25 cleaning sanitizing other carpets due to mice infestation
5. \$862 cleaning, deodorizing clothing due to floods and mice infestation – bill notes there is "a foul odour"
6. \$134.40 for shoe replacement –chewed by mice, bought in 2016
7. \$798.01 new mattress, one in place chewed by mice and filled with feces, cost \$2500 and 8-10 years old
8. \$37.81 for mouse traps
9. \$800 for free month rent due to eviction; no Notice to End Tenancy was served
10. \$375 refund of security deposit
11. \$987.50 for sewage cleanup and 27 towels ruined
12. \$1950 for loss of electricity- 19 1/2 months at \$100 a month
13. \$3120 for loss of quiet enjoyment -19 1/2 months, due to mice, electrical problems, no heat and bullying behaviour of landlord's son
14. \$2400 for loss of property, clothes, ornaments, some furniture. She had no contents insurance and it would have been \$1000 deductible if she had.
15. \$150.00 suite cleaning at beginning of tenancy
16. \$1200 for no heat Aug. 2015 to December 2016
17. \$2650.00 for aggravated damages from August 2015 to March 31, 2017.

The landlord provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached. Although I have considered all the evidence, I have referenced only that which is most relevant to my decision.

Analysis

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.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove on the balance of probabilities that the losses incurred were due to act or neglect of the landlord. I find the weight of the evidence is the landlord failed in his duty to do emergency repairs or basic maintenance of the property and thus violated his obligations under sections 32 and 33 of the Act. I find the tenant entitled to compensation for the money she spent on repairs, that is for an inspector to determine the source of the mice problem (\$136.50) and for traps she bought (\$37.50).

I find her also entitled to compensation for the damage done to her belongings by the mice, including replacing a mattress and cleaning costs for their clothes. I find it credible that some of the cleaning costs were also necessary due to the sewage backup which the tenant had to clean up herself. I find her evidence credible that she had to use her towels and then discard them after drying up the sewage overflow and washing floors and surfaces with bleach many times to try to get rid of bacteria and odour. I find her entitled to recover as follows:

1. \$157.50 cleaning, sanitizing, carpet due to mice infestation
2. \$131.25 cleaning sanitizing other carpets due to mice infestation
3. \$862 cleaning, deodorizing clothing due to floods and mice infestation – bill notes there is "a foul odour"
4. \$134.40 for shoe replacement –chewed by mice, bought in 2016
5. \$798.01 new mattress
6. \$987.50 for sewage cleanup and 27 towels ruined

Security Deposit:

I find it credible that the tenant vacated March 31, 2017 and provided her forwarding address twice to the landlord, once at the end of February 2017 and again in April 2017

after she moved. Her credibility is supported by copies of the letters in evidence that she gave to the landlord. I find section 38 of the Act requires the landlord to either refund a tenant's security deposit or make an application to claim against it within 15 days of the later of the tenant vacating and providing their forwarding address in writing. If the landlord does not refund the deposit or make an Application to claim against it within the 15 days, I find the tenant is entitled to a refund of twice her deposit according to section 38(6) of the Act. I find the tenant entitled to \$750 refunded.

Claim for Eviction:

I find the evidence is that no Notice to End Tenancy was served on the tenant. Although she claims \$613.48 moving expenses because "he evicted me" and \$800 for a free month rent due to eviction, I find no section 49 Notice to End Tenancy for landlord's use of the property was served on her. In fact, in evidence is a letter from her dated February 2017 saying she was ending her tenancy effective March 31, 2017. I find there is no compensation provided for the tenant in the Act in this circumstance. Compensation of one month's free rent pursuant to section 51 of the Act is triggered by a section 49 Notice to End Tenancy for landlord's use of the property. I also find the act does not obligate a landlord to pay a tenant's moving expenses even if she is evicted. I dismiss this portion of her claim. I

Damages:

In respect to the tenant's claim of \$3120 for loss of quiet enjoyment for 19 1/2 months, due to mice, electrical problems, no heat and bullying behaviour of landlord's son, I find it useful to consider the violations under different sections of the Act. The withdrawal of services is contrary to section 27 of the Act and neglect to maintain contrary to sections 32 and 33 of the Act. The impact on her peaceful enjoyment will be considered separately below. I find she had electrical problems for about half of each week, no heat for 15 months (Aug. 2015 to December 2016) and the mouse infestation for 3 months (January 2017 to March 2017). I find she suffered electrical problems about half of her time in the suite (3 days a week) so I find it reasonable to grant a rent rebate of 5% for 10 months for electrical problems (\$40 x 10 = \$400). I find her entitled to a rebate of 10% of rent for the 15 months without heat (\$80 x 15 = \$1200) and 20% for 3 months for the landlord's neglect to attend to the mice infestation (\$160 x 3 = \$480). Total compensation awarded for withdrawal of services and neglect is \$2080.00.

Loss of Peaceful Enjoyment:

I find section 28 of the Act requires a landlord to protect the peaceful enjoyment of the tenant. I find the weight of the evidence is that the landlord violated this section of the Act. He allowed the tenant to suffer electrical problems, two floods, no heat and an

extreme mice infestation without taking any action to protect her peaceful enjoyment. While I find insufficient evidence of the landlord's son bullying tactics, I find the neglect of the landlord to do basic maintenance, do emergency repairs for flooding and to control the mice infestation significantly affected the quiet enjoyment of the tenant. I find the photographs showing the extent of the mice infestation are particularly disturbing. I find the tenant entitled to compensation of \$1900 for this neglect of the landlord which violates section 28 of the Act.

Regarding her further claim for damages, that is \$2400 for loss of property, clothes, ornaments, some furniture, I find insufficient evidence to support this claim. Her cleaning receipts and mattress replacement illustrate that she had many of her items cleaned and she replaced the mattress and she is being compensated for these expenses. I dismiss this portion of her claim. I also dismiss her claim for \$150.00 for suite cleaning at the commencement of her tenancy. There is insufficient evidence that the landlord agreed to reimburse her for suite cleaning.

Regarding the tenant's claim for aggravated damages of \$2650.00, I find Residential Tenancy Policy Guideline 16 states:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded.

I find the tenant's claims have been considered and, when proven, have been fully compensated. Her total rent for the suite was \$15,600 and the result of the rent refund ordered is an award of about half of her rent being refunded. Although the condition of her suite was distressing, I find she did not mitigate her damages by moving out. I find it not applicable to award aggravated damages. I dismiss this portion of her claim.

Conclusion:

I find the tenant is entitled to a monetary order as calculated below and to recover filing fees paid for this application.

Calculation of Monetary Award:

Mice inspection (136.50) + traps 37.50 (emergency repairs)	174.00
Compensation for damage to belongings	3070.76
Refund double security deposit	750.00
Loss of services and neglect to repair mouse infestation	2080.00

Loss of peaceful enjoyment	1900.00
Filing fee	100.00
Total Monetary Order to Tenant	8074.76

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: May 11, 2019

Residential Tenancy Branch