



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP MNDCT OLC RP RR

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlords was represented by their agents AM and GF in this hearing. The tenant was accompanied by his advocate SM. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Preliminary Issue—Amendment to Tenant's Application

The tenant is requesting a \$1,600.00 rent reduction, plus compensation for 3, four hour work shifts at \$23.00 per hour for a total of \$276.00. I note that the tenant's original application requests a rent reduction of \$800.00, plus a monetary order of \$80.00 in compensation for losses. Although an ongoing rent reduction can be considered under the *Act*, the tenant has not filed an application to amend his original monetary claim for lost wages from \$80.00 to \$276.00.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenant has not filed any amendments to increase his monetary claim. As an amendment was not received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to the amendment the maximum monetary claim that will be considered in this application will be \$880.00 as indicated in the tenant's original application.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to the monetary compensation requested?

Background and Evidence

This month-to-month tenancy began in October of 2016. Rent is currently set at \$800.00 per month, payable on the first of every month. The tenant paid a security deposit in the amount of \$400.00, which the landlord still holds.

The tenant filed this application as he has been experiencing issues with lack of hot water in his rental unit for some time, and the matter is still unresolved. The tenant is requesting that the landlord perform repairs to fix the issue, as well as provide monetary compensation for his losses, and a rent reduction of \$800.00 per month for the reduction in the value of his rent. The tenant testified that the lack of hot water in his rental unit has been a significant burden on him as he has had to boil water to bathe, and do dishes. The tenant testified that he had contacted the property manager on several occasions to have the issue addressed.

The tenant testified that he has submitted at least 1 written request to the landlord, and that this was the second occasion when the building has had issues. The tenant testified that he was not the only tenant affected, and called two witnesses to confirm this.

The tenant's witness RP, another tenant in the building who resides on the same floor, testified that he has been experiencing issues with adequately hot water in his rental unit for at least 3 months. RP testified that his water would fluctuate between cold and lukewarm. RP testified that he had attempted to contact the building management without any success, and has had to resort to boiling water. RP testified that he called the voicemail, but it was full, and when he finally reached someone, he was assured that the problem would be addressed. The tenant testified that despite the landlord's testimony and evidence to show that they had resolved the issue, the issue is still unresolved in his particular unit.

NS also testified in this hearing, and resides on another floor in the building. NS testified that he, too, is experiencing issues with access to hot water in his rental unit, and it is lukewarm at best. NS testified that he has had to take cold showers the last 3 months, and despite plumbers attending the building, the matter still is not fixed. NS testified that he has attempted to contact the property management company, as well as the employees on site. NS testified that no plumbers had attended his actual rental unit.

The landlord's agents testified in this hearing that a new manager started on April of 2019, and that there was a transition in employees. The landlord testified that they have not received any written complaints about the issue that they know of, and that the tenant's evidence does not support that any written complaints have been submitted. The landlord submitted invoices in their evidence to support that they have been addressing issues that they were aware of. One of the invoices indicates that the contractor had visited the tenant's rental unit, but the tenant was not home. The tenant testified that a plumber had called him to arrange a time to visit his rental unit, and he informed the plumber that he would give permission for him to enter his rental unit. The tenant testified that nobody attended his rental unit to fix the issue.

The advocate submitted in the hearing that the invoices submitted do not adequately show that the landlord has addressed the issue, and that the landlord has not given proper notice or made arrangements with the tenants to attend their specific rental units. The advocate pointed out that some of the invoices reference issues and rental units not related to the tenant, including a receipt that is for a kitchen drain for another rental unit.

The landlord testified that to the best of their knowledge the hot water issue has been fixed, and that someone had attended to replace parts for the hot water boiler recently.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**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...
- (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, plumbing and heating may be considered emergency repairs. Sections 33(5)(b) and 33(6)(b) require the tenant to provide a written account of the emergency repairs accompanied by a receipt for the amount claimed. I am not satisfied that the tenant had provided sufficient evidence to show that the above steps were followed. Accordingly, I dismiss the tenant's application for any reimbursements as allowed under section 33 of the *Act* without leave to reapply.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

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.

I have considered the testimony of both parties, and despite the landlord's testimony and evidence to support that the matter had been resolved, I find that the tenant has provided sufficient evidence in the form of sworn witness testimony to show that the matter has not been resolved for this tenant, and for at least two other tenants in this building. I acknowledge the fact that there may have been issues with communications between the parties in light of the employee transition.

Section 33(2) of the *Act* states the following about the landlord's duty to provide the tenants with a name and contact number for emergency repairs:

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

I order that the landlord perform repairs as required by section 32 of the *Act* as stated above. I also order that the landlord comply with section 33(2) of the *Act* by providing tenants with a means of contacting the landlord in the case of an emergency repair. I order that the landlord ensure that the voicemail is not full, and that the tenant has a means of leaving a message with the designated emergency contact.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities that the landlord had failed to comply with the *Act* and tenancy agreement, which contributed to the tenant's loss.

I accept the tenant's testimony that he has been without adequate hot water for several months, which has resulted in a reduction in the value of his tenancy. I am not satisfied that the tenant's evidence supports the amount claimed in the tenant's application, however. As stated above, the onus is on the tenant to support the value of the loss. The tenant's application for lost wages is therefore dismissed without leave to reapply.

I find that the landlord has failed to adequately address the issue in the building, and the tenant is entitled to some compensation. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal compensation in the amount of \$240.00 (3 months x a 10 percent rent reduction) for the lack of proper access to adequate hot water in his rental the unit during the last few months. The tenant's application for any future rent reductions is dismissed with leave to reapply.

Conclusion

I order that the landlord perform repairs and maintain the rental home as required by section 32 of the *Act*, and provide the tenants with a means of emergency contact as required by section 33 of the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$240.00. I allow the tenant to implement this monetary award of \$240.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$240.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for monetary losses is dismissed without leave to reapply.

The tenant's application for any future rent reductions is dismissed with 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: June 14, 2019

Residential Tenancy Branch