



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC OT RP RR

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order for 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 sections 32 and 62; and,
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

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 and cross-examine witnesses.

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Background and Evidence

The tenant testified that the monthly rent was ~~\$420.00~~ ~~\$840.00~~. The tenant testified that there were multiple problems with the tenancy including an infestation of cockroaches, an infestation of rats, plumbing problems with the bathtub, and electrical problems. The parties both agreed that the cockroach infestation had been adequately resolved by extermination services prior to the hearing.

The tenant presented photographs which he testified showed rat feces in the rental, including in the kitchen and on the stove. The tenant testified that he complained multiple times about the problems since June 2019 but the landlord did not make the requested repairs. The tenant also complained that the landlord entered the rental unit without his permission or providing proper notice. The tenant has requested a 50% reduction of rent since June 2019.

The landlord testified that he made all necessary repairs but the tenant had repeated problems with rats because the tenant did not keep the rental unit clean. The landlord provided photographs of the rental unit showing debris and trash on the kitchen floor. The landlord produced an invoice from a pest control service indicating that pest control services were performed on September 23, 2019. The landlord also produced a letter from the pest control service stating that the rodents were "introduced by the tenants leaving the door open even for a short time."

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by the tenants to the landlords if I determine that there has been a reduction in the value of a tenancy agreement. The tenants have requested compensation for numerous deficiencies in the rental unit which the tenants contend have reduced the value of the tenancy agreement. Each of the tenants' claims are addressed as follows:

I find that the tenant has presented sufficient evidence to establish that the rental unit had a leaky bathtub, electrical problems and rat infestation. I found the tenant's evidence was credible and it was corroborated by contemporaneous written complaints.

However, based on the photographs provided by the landlord and the written statement by the exterminator, I also find that the tenant has not fully mitigated his problems with the rats by failing to keep the rental unit in a clean and hygienic. I find that an appropriate rent reduction, in light of the deficiencies and the tenant's incomplete mitigation, is 15% of the rent from June 2019 to September 2019. Accordingly, I grant the tenant a monetary order of \$252.00 ~~\$504.00~~ (being 15% of the rent for the past four months).

The tenant has also requested aggravated damages, which is defined in Residential Tenancy Branch Policy Guideline No. 16 as follows:

“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 and must specifically be asked for in the application.

In this matter, I find that the tenant has not provided sufficient evidence to establish the existence of sufficient intangible damages to warrant the imposition of aggravate damages. Residential Tenancy Branch Policy Guideline No. 16 states that aggravated damages are rarely awarded and I do not find that the tenant has proven that such circumstances have occurred in this matter to justify an award of aggravated damages. Accordingly, I dismiss the tenant’s application for an award of aggravated damages.

The tenant has also requested repairs to the rental unit. Section 32 of the *Act* states that the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

For the reasons stated above, that the rental unit has a leaky bathtub electrical problems and rat infestation. Although the landlord has presented evidence that rodent control services were provided in September 2019, based upon the testimony of both parties, I find that a rodent infestation still exists at the rental unit. Further, I find that each of the problems are not in contravention of section 32 of the *Act* as being noncompliant with health, safety and housing standards.

Accordingly, I order the landlord to retain a licensed electrical contractor to repair the electrical services to the refrigerator, to retain a license plumber to repair the bathtub plumbing and retain a licensed pest control service to and conduct appropriate rat control services.

Based upon the tenant’s testimony, I am satisfied that the landlord has entered the rental unit without providing proper notice. Pursuant to section 70 of the *Act*, I hereby order the landlord to not enter the rental unit for the duration of the tenancy, other than in compliance with section 29 of the *Act* or upon further order.

Conclusion

I grant tenants' application for repairs to the rental unit pursuant to sections 32 and 62. I hereby order the landlord to retain a licensed electrical contractor to repair the electrical services to the refrigerator, to retain a license plumber to repair the bathtub plumbing and retain a licensed pest control service to and conduct appropriate rat control services.

I grant the tenant a monetary order in the amount of \$252.00 ~~\$504.00~~ and this monetary award may satisfied by deducting this sum from ONE future rent payment.

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 25, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON NOVEMBER 14, 2019 AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.