



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

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. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package and written evidence sent by the tenants by registered mail on September 20, 2019, I find that the landlord was duly served with this material in accordance with sections 88 and 89 of the *Act*. Tenant TA (the tenant) said that they handed the landlord a copy of their November 4, 2019 amendment to the original application, adding an issue regarding the hot water tank to the existing application. The landlord said that they had no objection to including this matter in this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses and other money owed arising out of this tenancy? Should an order or orders be issued against the landlord to undertake repairs to this rental unit? Should any other orders be issued against the landlord?

Background and Evidence

This tenancy for the upper two levels of a three storey house began in January 2012, by way of a fixed term Residential Tenancy Agreement (the Agreement). Another tenant lives in the lowest level of this 100+ year old house. When the initial term expired, the tenancy continued as a month-to-month tenancy. Monthly rent has remained at \$1,035.00, payable in advance on the first of each month throughout this tenancy. The tenants pay the hydro and gas directly to those utilities, and receive payments from the tenant in the lowest level of this home, the only other tenant in this house. The landlord continues to hold the tenants' security and pet damage deposits, totalling \$1,035.00.

The tenants' application for a monetary award of \$228.90 was to reimburse them for duct cleaning that they obtained on August 29, 2019. In addition to the receipt for this work that they entered into evidence for this hearing, the tenants provided copies of emails they exchanged with the landlord and sworn testimony that the ducts had never been cleaned since they entered into this tenancy. The tenant asserted that this cleaning was necessary because of the presence of mice and silverfish in the house. The tenant maintained that the landlord had not undertaken this work which was part of general hygienic maintenance of this house.

The tenants also applied for an order requiring a more equitable arrangement for paying for hydro and gas. They maintained that the existing arrangement was unsuitable because it placed them in the position of having to collect utility payments from the lower level tenant in this building. Without the same rights as a landlord, they were without adequate measures to ensure that they were being compensated by the lower level tenant in this building. There were also ongoing disagreements with tenants below them who objected to the proportion of utility payments the residents in each unit should be paying.

The tenants also sought an order requiring the landlord to commence a pest control program to address a worsening problem with silverfish. They maintained that silverfish which used to only be a problem in the uppermost "attic" level of this dwelling were now causing them major problems throughout their rental unit.

The tenants' November 4 amendment to their application also sought a solution to their concerns about the adequacy and consistency of their supply of hot water. They claimed that the previous solution identified by the landlord of raising the temperature of the hot water tank is no longer successful because the temperature cannot be increased any further.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the course of this hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of some of the issues in dispute.

The landlord said that they had spoken with the lower level tenant who agreed to an arrangement whereby the lower level tenant would pay 29% of the hydro and gas for this property retroactive to September 1, 2019. At this hearing, the tenants agreed to assume the remaining 71% of the hydro and gas costs for this house, again retroactive to September 1, 2019. Although the tenants offered to keep the hydro and gas accounts in their name, this would not address their concern that they had no legal way to ensure that the lower level payment required would be paid. Since there is no longer a dispute with respect to the breakdown of the hydro and gas payments, I make the following orders to ensure that there is a workable arrangement in place whereby the hydro and gas payments will be made.

1. I order that the landlord enter into accounts for hydro and gas for this home with the utility providers. I order that the tenants are to reimburse the landlord 71 % of the cost of hydro and gas within 30 days of receiving a copy of the hydro and gas bills from the landlord. The landlord is free to enter into a similar arrangement with the lower level tenant in this home for the remaining 29% of the costs of hydro and gas. I order that the above sharing of these costs is to be made effective to September 1, 2019.

At the hearing, the landlord gave undisputed sworn testimony that they are planning changes to the provision of heat and possibly hydro to this home, which could impact these utility costs in the future. Since the above sharing arrangement may no longer be appropriate once these mechanical changes are made, I issue the following order:

2. I order that the above order is subject to change with the agreement of the parties in the event that mechanical changes to the heating or hydro system are undertaken. In the event that the parties are unable to reach a resolution of a change in the shares of these costs to be assumed by the residents in this home, the parties are at liberty to apply for dispute resolution to obtain a decision from an arbitrator appointed pursuant to the *Act*.

At the hearing, the parties also discussed the tenants' concerns about the adequacy and consistency of the hot water tank and system in this rental unit. The landlord said that they did not know the age of the existing hot water tank in this home. They said that after receiving the tenants' amended application, they had planned to run a recovery test on the existing hot water tank to see how long it took to heat the water. As the landlord had no objection to the following course of action with respect to this item, and the tenants agreed that this constituted an adequate resolution of their concerns, I make the following orders:

3. I order the landlord to conduct a recovery test on the hot water tank in this rental property by November 29, 2019. I order the landlord to inform the tenants of the result of this recovery test by December 1, 2019. In the event that the hot water tank is not working adequately, I order the landlord to replace the existing hot water tank by December 19, 2019.
4. In the event that the landlord does not comply with Order #3, I order the tenants to reduce their monthly rent by \$100.00 until such time as the landlord has complied with the provisions of Order #3 as outlined above. In that event, the tenants' monthly rent will revert to the amount allowed under their Agreement on the month following the landlord's compliance with the terms of Order #3.

Since there remained a dispute with respect to the remaining portions of the tenants' application, I make the following findings.

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/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 tenants to prove on the balance of probabilities that the landlord contravened the *Act* or their Agreement, and that the tenants are entitled to a monetary award for their losses.

In this case, there is no dispute that the tenants did incur \$228.90 in retaining the services of a company that entered the rental home and conducted duct cleaning and examined the furnace filter. The parties agreed that the tenants did not obtain the landlord's authorization to undertake this work, nor did the landlord agree to reimburse the tenants for their costs in this regard.

Section 32(1) of the Act, establishing the landlord's responsibilities with respect to repairs and general maintenance, reads as follows:

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.

As noted during the hearing, section 33 of the Act provides tenants with an opportunity to obtain reimbursement for repair costs they incur during a tenancy, but only under specific circumstances, described as "emergency repairs." The relevant portions of section 33 for this situation are as follows:

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,

(iv) damaged or defective locks that give access to a rental unit,

(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.

(4) A landlord may take over completion of an emergency repair at any time.

(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);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(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.

The landlord gave undisputed sworn testimony that they regularly inspect the furnace and vacuum portions of the ducts. The landlord also gave undisputed sworn testimony that there is no proven health benefits in retaining companies that perform the duct cleaning service. I find that the tenants have provided insufficient evidence to demonstrate that professional duct cleaning, which had not been undertaken by the landlord since this tenancy began, qualifies as an "emergency repair" as defined under section 33(1) of the *Act*. For these reasons, I dismiss the tenants' application for a monetary award for their repair costs without leave to reapply.

I also heard considerable sworn testimony and some written evidence from the tenants with respect to their allegation that the landlord has not taken adequate measures to address the ongoing and persistent silverfish infestation in their rental unit. While I have taken into consideration the landlord's sworn testimony that the age and type of construction of this house render this a difficult problem to address, the landlord offered no expert opinion or written evidence from anyone trained as a pest control specialist to support the landlord's assertions. Although the landlord may very well be correct in claiming that it would be very difficult to address this problem, I find that there is still good reason to have a licensed pest control specialist attend the rental home and provide their opinion as to possible solutions. For these reasons, I issue the following order:

5. I order the landlord to retain the services of a licensed pest control specialist before December 1, 2019 to conduct an inspection of the rental home and provide recommendations on how to reduce and to the extent possible minimize the silverfish infestation in the tenants' rental unit. I order the landlord to provide the tenants with a copy of the written report provided to the landlord by the pest control specialist within one week of receiving that report. I order the landlord to take the recommended steps identified by the pest control specialist before January 1, 2020.

6. In the event that the landlord does not comply with the provisions of Order #5 as outlined above, I order the tenants to reduce their monthly rent by \$50.00, until such time as the landlord has complied with Order #5. In that event, the tenants' monthly rent will revert to the amount allowed under their Agreement on the month following the landlord's compliance with the terms of Order #5.

Conclusion

I dismiss the tenants' application for a monetary award without leave to reapply.

I issue the following orders to the parties:

1. I order that the landlord enter into accounts for hydro and gas for this home with the utility providers. I order that the tenants are to reimburse the landlord 71 % of the cost of hydro and gas within 30 days of receiving a copy of the hydro and gas bills from the landlord. The landlord is free to enter into a similar arrangement with the lower level tenant in this home for the remaining 29% of the costs of

hydro and gas. I order that the above sharing of these costs is to be made effective to September 1, 2019.

2. I order that the above order is subject to change with the agreement of the parties in the event that mechanical changes to the heating or hydro system are undertaken. In the event that the parties are unable to reach a resolution of a change in the shares of these costs to be assumed by the residents in this home, the parties are at liberty to apply for dispute resolution to obtain a decision from an arbitrator appointed pursuant to the *Act*.

I issue the following orders against the landlord:

3. I order the landlord to conduct a recovery test on the hot water tank in this rental property by November 29, 2019. I order the landlord to inform the tenants of the result of this recovery test by December 1, 2019. In the event that the hot water tank is not working adequately, I order the landlord to replace the existing hot water tank by December 19, 2019.

4. In the event that the landlord does not comply with Order #3, I order the tenants to reduce their monthly rent by \$100.00 until such time as the landlord has complied with the provisions of Order #3 as outlined above. In that event, the tenants' monthly rent will revert to the amount allowed under their Agreement on the month following the landlord's compliance with the terms of Order #3.

5. I order the landlord to retain the services of a licensed pest control specialist before December 1, 2019 to conduct an inspection of the rental home and provide recommendations on how to reduce and to the extent possible minimize the silverfish infestation in the tenants' rental unit. I order the landlord to provide the tenants with a copy of the written report provided to the landlord by the pest control specialist within one week of receiving that report. I order the landlord to take the recommended steps identified by the pest control specialist before January 1, 2020.

6. In the event that the landlord does not comply with the provisions of Order #5 as outlined above, I order the tenants to reduce their monthly rent by \$50.00, until such time as the landlord has complied with Order #5. In that event, the tenants' monthly rent will revert to the amount allowed under their Agreement on the month following the landlord's compliance with the terms of Order #5.

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: November 19, 2019

Residential Tenancy Branch