



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 02, 2021 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord make repairs to the unit or property
- For compensation for monetary loss or other money owed
- To reduce rent for repairs, services or facilities agreed upon but not provided

The Tenant appeared at the hearing with Legal Counsel. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant and Legal Counsel who did not have questions when asked. I told the Tenant and Legal Counsel that they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant submitted evidence. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified as follows. The hearing package and evidence were sent to Unit 1 and Unit 2 (as noted on the front page of this decision) by registered mail on February 11, 2021. The Landlord lives in Unit 2. The Landlord is associated to Unit 1 through the Title Search submitted. Legal Counsel also taped the hearing package and evidence to the Landlord’s door.

The Tenant submitted the following relevant evidence of service. A Title Search associating the Landlord to Unit 1. The customer receipts and tracking information for the hearing packages and evidence showing notice cards were left in relation to the packages on February 12, 2021 and February 18, 2021 and the packages were unclaimed.

I am satisfied based on the undisputed testimony of the Tenant and documentary evidence of service submitted that the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). The Landlord cannot avoid service by failing to pick up registered mail packages. The Landlord is deemed to have received the hearing package and evidence on February 16, 2021 pursuant to section 90(a) of the *Act*. I also find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant and Legal Counsel were given an opportunity to present relevant evidence and make relevant submissions. I have considered the testimony, submissions and documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make repairs to the unit or property?
2. Is the Tenant entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The Tenant testified as follows. There is no written tenancy agreement between the parties. The tenancy started in February of 2020. Rent is \$1,100.00 due on the first day of each month. She paid a \$550.00 security deposit.

Repairs

The Tenant sought the following repair orders:

For repairs to be done have the plumbing working properly in the bathroom and shower. To get the plumbing in the rental unit fixed. To get the appropriate person in to have a functioning shower. To fix the drainage issue with the pipes and stacks.

A repair order to fix the broken window in the bedroom of the rental unit.

Legal Counsel made the following submissions. The videos in evidence show there is a larger issue with the plumbing in the building. The Landlord has not properly maintained the plumbing and there are leaks and issues with the walls in and around the rental unit. There are also general repair issues in the building because the Landlord does not do proper maintenance or repairs. The Tenant has had to do repairs and pay for the costs associated with them. The Tenant had a plumber attend the rental unit and examine the plumbing. The plumber said they were not capable of repairing the issues in the rental unit because of the issues with the plumbing in the building which are connected to the issues in the rental unit.

The Tenant testified as follows. She had a plumber look at her shower. The pipes are not working. The shower handle keeps breaking off. The pipes are leaking into the walls. There is mold growing. She fixed a hole, but water is leaking down and rotting out the walls. The Landlord told the plumber not to fix the issues. She does not have a functioning shower. The shower drain does not drain. The plumber said the stacks need to be cleaned. The pipes have not been maintained and are bursting. The pipes are not draining. The plumber said a restoration company was required for the shower and bathroom issues. The bedroom window in the rental unit is also broken.

The Tenant and Legal Counsel said that a request for the Landlord to address the plumbing issues has been sent to the Landlord; however, a request about repairing the bedroom window has not been sent.

Compensation

The Tenant submitted a Monetary Order Worksheet seeking compensation of \$2,617.00 for various items related to the issues raised about the rental unit. The Tenant submitted receipts for the items in the Monetary Order Worksheet.

Legal Counsel advised as follows. The compensation sought is for general repair costs associated with the Tenant doing the required upkeep of the rental unit. One of the items is for the cost of a contractor who attended the rental unit to do a wall repair which the Tenant paid for.

The Tenant testified that the items in the Monetary Order Worksheet are for money paid to deal with repair issues in the rental unit because the Landlord has not been responsive in this regard.

The Application states that the Tenant is also seeking \$1,000.00 in aggravated damages given the Landlord's continued negligence in failing to make repairs. The Tenant testified about the stress she is experiencing in having to deal with the issues in the rental unit and building. The Tenant testified that she has had no enjoyment or relaxation in her own home due to the issues in the rental unit and having to deal with them. Legal Counsel reiterated that the building is in a general state of disrepair. Legal Counsel advised that the Tenant has basically taken over the role of the Landlord by doing the repairs that she is capable of. Legal Counsel submitted that the Landlord is not taking on his core responsibilities as a landlord.

Rent Reduction

Legal Counsel advised that the Tenant is seeking a rent reduction of \$294.00 per month because the Landlord has not done maintenance or repairs and the value of the rental unit has significantly diminished. Legal Counsel submitted that there has been a long-term pattern of neglect and lack of response from the Landlord.

The Tenant testified that the Landlord just collects rent and lets tenants do what they need to do to fix things up in the building. The Tenant testified that the Landlord ignores the tenants.

Evidence

The Tenant submitted the following relevant documentary evidence:

- Photos of the rental unit and building.
- Photos relating to a pest infestation.
- Correspondence with the Landlord about mold in the rental unit.
- Receipts.
- Correspondence about the Tenant having the fridge fixed due to a leak.
- A plumbing invoice.
- An email from the plumbing company about black mold in the rental unit, the shower being unusable and a restoration company being required. The email also states that the drainage issue in the rental unit is likely caused by clogged stacks in the building.
- Videos of the rental unit and building.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Repairs

Section 32 of the *Act* states:

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 accept the undisputed testimony of the Tenant and undisputed submissions of Legal Counsel. Based on the testimony and submissions, as well as the evidence submitted, I am satisfied the plumbing in the rental unit and building has not been maintained and requires repair. Based on the same evidence, I am satisfied the Tenant has asked the Landlord to repair the plumbing issues and that the Landlord has not done so. Based on the same evidence, I am satisfied the Landlord has breached section 32 of the *Act*. I am satisfied the Tenant is entitled to a repair order.

Given the above, and pursuant to section 62 of the *Act*, **I order the Landlord to do the following immediately:**

- **Have a qualified plumber attend the rental unit and building to assess the plumbing repairs required, and to do those repairs, to bring the Landlord into compliance with section 32 of the *Act*.**
- **Without limiting the above, the Landlord is ordered to have a qualified plumber attend the rental unit to assess the plumbing repairs required in the bathroom and to do those repairs. This must include repairing the shower so that it functions properly.**

- **Without limiting the above, the Landlord is ordered to have a qualified plumber assess the drainage issues in the rental unit and do the necessary repairs to fix the drainage issues including any issues with the pipes and/or stacks.**
- **The above must be started immediately and completed no later than one month from the date of this decision. The above must be completed at the Landlord's expense.**

I decline to issue a repair order for the broken bedroom window given a request to fix the bedroom window has not been provided to the Landlord. Requesting the repair is the first step in having the window repaired. This request is dismissed with leave to re-apply.

Compensation

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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 arbitrator may determine whether:

- 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.

In relation to the request for aggravated damages, Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...

“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.

I decline to award the Tenant the compensation sought. The Tenant should not be doing repairs, or having repairs done, in the rental unit. Sections 32 and 33 of the *Act* set out when a tenant can repair a rental unit or have repairs done. I am not satisfied based on the evidence provided that either sections 32 or 33 of the *Act* apply. Further, a tenant would not be entitled to compensation for repairing damage they caused which is addressed by section 32 of the *Act*.

I acknowledge the position of the Tenant and Legal Counsel that the Landlord ignores the tenants and will not do repairs. However, the process to address this is to seek a repair order from the RTB. There is no evidence before me showing that the Tenant has previously obtained a repair order from the RTB and that the Landlord has not complied with the order. Seeking a repair order from the RTB is the first step and should be done prior to the Tenant doing repairs, having repairs done or purchasing materials to do repairs. I also consider seeking a repair order from the RTB to be part of the Tenant's obligation to mitigate loss.

The request for compensation is dismissed without leave to re-apply.

Rent Reduction

Section 65 of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3)...if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement...

As stated, I am satisfied the Landlord has breached section 32 of the *Act* by failing to maintain the rental unit and building in a state of repair that complies with health, safety and housing standards required by law and makes it suitable for occupation. I note that I accept that both the rental unit and building are in a general state of disrepair based on the undisputed testimony of the Tenant, undisputed submissions of Legal Counsel and the evidence submitted.

I am satisfied based on the undisputed testimony of the Tenant, undisputed submissions of Legal Counsel and the evidence submitted, that the value of the tenancy has been reduced due to the maintenance and repair issues in the rental unit and building as well as the Landlord's neglect of these issues.

I accept the undisputed position of the Tenant and Legal Counsel that the value of the tenancy has been reduced by \$294.00 per month and I grant the Tenant a rent reduction of \$294.00 per month pursuant to section 65 of the *Act*. In coming to this decision, I place particular weight on the following. The undisputed testimony of the Tenant that she does not have a working shower. The email from the plumbing company stating that they declined to work in the rental unit due to dangerous working conditions, that they noted black mold in the rental unit and that the shower is unusable. The video of what I understand to be a common area showing the ceiling leaking, falling down and water stained.

I note that I take a different view of the rent reduction request than the compensation request in relation to which I have stated that the first step is for the Tenant to apply for a repair order from the RTB. The Landlord is obligated to comply with section 32 of the *Act* without an order from the RTB stating so. The Landlord has failed to comply with section 32 of the *Act*. It is the Landlord's failure to comply with section 32 of the *Act* that has reduced the value of the tenancy. I do not find that the Tenant was required to apply for a repair order from the RTB prior to seeking a rent reduction or that the Tenant was required to mitigate in relation to the rent reduction request.

The rent reduction will start June 01, 2021. The rent reduction will continue until the Landlord is in compliance with section 32 of the *Act* and the above orders.

Conclusion

I order the Landlord to do the following immediately:

- **Have a qualified plumber attend the rental unit and building to assess the plumbing repairs required, and to do those repairs, to bring the Landlord into compliance with section 32 of the *Act*.**
- **Without limiting the above, the Landlord is ordered to have a qualified plumber attend the rental unit to assess the plumbing repairs required in the bathroom and to do those repairs. This must include repairing the shower so that it functions properly.**
- **Without limiting the above, the Landlord is ordered to have a qualified plumber assess the drainage issues in the rental unit and do the necessary repairs to fix the drainage issues including any issues with the pipes and/or stacks.**
- **The above must be started immediately and completed no later than one month from the date of this decision. The above must be completed at the Landlord's expense.**

The request for compensation is dismissed without leave to re-apply.

Rent is reduced by \$294.00 starting June 01, 2021. The rent reduction will continue until the Landlord is in compliance with section 32 of the *Act* and the above orders.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: May 12, 2021

Residential Tenancy Branch