



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed 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 was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The tenant testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant confirmed her email address for service of this Decision.

Preliminary Issue- Service

The tenant testified that she served the landlord with her application for dispute resolution and evidence at the email address provided by the landlord for service on June 18, 2022.

The tenant entered into evidence RTB Form 51 “Address for Service” which is signed by an agent for the landlord. The e-mail address provided by the landlord for service is located on the cover page of this decision.

The tenant testified that she emailed the landlord her application for dispute resolution at the email listed above and sent it to another agent of the landlord, via email on June 18, 2022, with whom she had more regular contact. The tenant entered into evidence the serving emails; however, in the copy submitted into evidence, it was not possible to see the date the e-mails were sent or what e-mail addresses the emails were sent to.

In the hearing I requested the tenant to re-upload the serving emails, and to expand the boxes to show the email addresses the documents were sent to and the date they were sent. The tenant did so. The email entered into evidence shows that the tenant’s application for dispute resolution and evidence were sent to the landlord’s email address for service stated on RTB Form 51 as well as another email address on June 18, 2022.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 89** (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a)by leaving a copy with the person;
 - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(f)by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

I find that the landlord, via RTB Form 51, authorized the tenant to serve the landlord via email at the email address located on the cover page of this decision. Based on the emails entered into evidence by the tenant and the tenant's undisputed testimony, I find that the tenant served the landlord with her application for dispute resolution and evidence via email on June 18, 2022 at the email address provided by the landlord in RTB Form 51. I find that the landlord was deemed served with the above documents on June 21, 2022, three days after their emailing, in accordance with section 89(1)(f) and section 90 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began on October 1, 2021 and ended at the start of September 2022. A written tenancy

agreement was signed by both parties and a copy was submitted for this application. Rent for the subject rental property started at \$3,500.00 per month, due on the first day of each month. The subject rental property is a three bedroom house.

The tenant testified that she is seeking \$2,254.00 for loss of use of the master bedroom and ensuite from October 2021 to March 2022. The tenant testified that within a few days of moving in she noticed that when she woke up, her skin, clothing, bed, furniture and the floor were covered in a coating of sand. The tenant testified that the sand was throughout the house but was in substantially higher quantities in the master bedroom and ensuite bathroom. The tenant entered into evidence photographs of sand over a variety of surfaces. The tenant testified that the sand was blowing through the forced air vents of the house.

The tenant testified that she notified an agent of the landlord about the sand issue on or around October 3, 2021. The tenant testified that the agent thought it was construction debris and that the forced air ducts required cleaning. The tenant submitted that the ducts were cleaned on October 10, 2021 and that this solved the blowing sand for 24 to 48 hours and then the sand returned in the same volume as before. The tenant testified that she started waking up in the night coughing from the sand and informed an agent of the landlord of same. The tenant testified that she moved to a different bedroom in the subject rental property to escape the high amount of sand in the master bedroom. The tenant testified that the landlord arranged for a home inspection which occurred on November 16, 2021. The tenant testified that the landlord did not complete a home inspection prior to purchasing the subject rental property and subsequently renting it to her.

The tenant testified that the home inspector told her that due to the age of the house the slab foundation was degrading and sand was entering the heating ducts. The tenant testified that all of the floor air vents needed to be sealed and a new heating system needed to be installed in the attic. The tenant testified that an agent of the landlord advised her that the landlord would proceed with the inspector's recommendations.

The tenant testified that the landlord installed foil caps over the floor vents to prevent sand from entering the master bedroom and the ensuite. The tenant testified that without forced air coming through the vents, the rooms were very cold in the winter.

The tenant's written submissions state that in January 2022 the landlord's agent installed thick air filters in all floor vents which reduced the ability of the forced air

system to heat the house. The tenant testified that the landlord provided her with one space heater to heat the three bedroom house. The tenant testified that the landlord provided a \$50.00 per month rent reduction from January to March 2022 to compensate the tenant for the increased utility costs associated with running a space heater to heat the house rather than the forced air system.

The tenant's written submissions state that she emailed the landlord's agent in February 2022 to advise that the filters were not effective and sand was still making its way into the subject rental property.

The tenant testified that the landlord installed a new furnace and heating ducts on April 9, 2022 and that the sand issue was solved with this installation.

The tenant testified that from the start of the tenancy until the furnace was replaced on April 9, 2022, she did not have use of the entire 3 bedroom home that she rented from the landlord. The tenant testified that she was unable to use the master bedroom and ensuite due to the high volumes of sand and lack of heat. The tenant testified that the master bedroom and ensuite were unfit for occupation. The tenant testified that the subject rental property is 1,509 square feet and the master bedroom and ensuite total 163 square feet.

The tenant testified that she is seeking monetary damages for the loss of use of the 163 square feet of space from October 2021 to March 2022 which resulted in a loss of the value of the tenancy agreement. The tenant's calculations for same are as follows:

| | |
|--|-------|
| Total house square footage | 1,509 |
| Total square footage of two rooms unfit for occupation | 163 |

| October 2021 - December 2021 | |
|--|--------------------|
| Monthly rent paid | \$3,500 |
| Total rent paid | \$10,500 |
| Rent per square foot | \$2.32 |
| Rent paid for 163 square feet unfit for occupation | \$378.16 per month |

| | |
|-------------------------------------|------------|
| Total rent paid for unlivable space | \$1,134.48 |
|-------------------------------------|------------|

| January 2022 - March 2022 | |
|--|--------------------|
| Monthly rent paid | \$3,450 |
| Total rent paid | \$10,350 |
| Rent per square foot | \$2.29 |
| Rent paid for 163 square feet unfit for occupation | \$373.27 per month |
| Total rent paid for unlivable space | \$1,119.81 |

Analysis

Section 32(1) 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.

Pursuant to section 65(1)(c)(i) of the *Act*, if the director finds that a landlord has not complied with the *Act*, the regulations or the tenancy agreement, the director may issue an order that any money paid by a tenant to a landlord must be repaid to the tenant.

Based on the tenant's undisputed testimony, I find that the heating system at the subject rental property was corrupted/ damaged at the start of this tenancy and was not fixed until April 9, 2022. Based on the undisputed testimony of the tenant and the photographs entered into evidence, I find that large amounts of sand were blown from the vents into the master bedroom and ensuite of the subject rental property between October 2021 and April 9, 2022. I find that the volumes of sand present in the master bedroom and ensuite and the lack of heat made those rooms unsuitable for occupation by a tenant. I find that it was unreasonable for the tenant to breath in and live in rooms filled with sand.

I find that from the start of the tenancy the landlord did not provide the tenant with all parts of the subject rental property in a state of repair that made them suitable for occupation by the tenant, contrary to section 32(1)(b) of the *Act*. I accept the tenant's testimony that she lost use of 163 square feet of the 1509 square foot house. I find that this loss was caused by the landlord's breach of section 32(1)(b) of the *Act*, the landlord did not provide the tenant with a property in a good state of repair suitable for occupation at the start of this tenancy. I find that prior to renting the subject rental property to the tenant the landlord had an obligation to ensure that the property was suitable for occupation. I find that reasonable due diligence, such as completing a home inspection before renting the subject rental property, would, more likely than not, have revealed the deficiencies with the heating system.

I find that the landlord is required to return to the tenant the proportion of rent the tenant paid to the landlord for the 163 unusable square feet from October 2021 to March 2022, as claimed by the tenant, in accordance with section 65(1)(c)(i) of the *Act*. I concur with the calculations made by the tenant and order the landlord to return \$2,254.29 to the tenant.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$2,354.29.

The tenant is provided with this Order in the above terms 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.

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: February 22, 2023

Residential Tenancy Branch