

## **DECISION**

### **Dispute Codes:**

MNDC, RR, FF

### **Introduction**

This is the Tenant's application for a monetary order for compensation for damage or loss; to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony and this matter proceeded on its merits.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to a reduction in rent?

### **Background and Evidence**

#### **The Tenant gave the following testimony**

The tenancy started on February 1, 2009. Monthly rent is \$1,050.00. The Tenant rents a house from the Landlord, consisting of a basement and an upper floor. The square footage of the upstairs and downstairs is approximately the same. The downstairs has two bedrooms, a bathroom and a family room.

The bathroom in the basement is not fully functional. When the Tenant moved into the house, the Landlord told him that the plumbing for the toilet and sink would be fixed. The toilet has been repaired, but the sink has not been installed and remains on the floor of the bathroom. The Tenant is applying for compensation for loss of full use of the downstairs bathroom since the beginning of the tenancy.

On April 11, 2009, the house was flooded, causing damage to the basement. The Tenant called the property manager right away, but it took 2 months for the repairs to be completed. The Tenant was without use of the basement for the entire 2 months.

On October 26, 2009, there was another flood because the Landlord did not clear the drains after the first flood. There have been 2 or 3 additional floods since then. The Landlord removed 1 ½ feet of drywall from the bottom of the basement walls and removed the wet carpet, but is refusing to pay for anymore work to be completed. The floors are bare concrete and the drywall remains incomplete.

The Tenant is applying for compensation for loss of use of the basement for the two months it took to make repairs after the initial flood. The Tenant is applying for further compensation for loss of use of the basement since October 26, 2009. The Tenant is also applying for a reduction in rent because he is not able to use half of the house.

The Landlord's agent gave the following testimony

The Landlord's agent testified that the Landlord is not prepared to do anything further to complete the repairs in the basement. The Landlord believes the Tenant's claim is excessive.

The Landlord believes the Tenant has already been compensated because he is paying below market rent for the house. Before the Tenant moved in, the Landlord was getting \$1,400.00 monthly rent. Prior to moving into the rental unit, the Tenant rented a different place from the Landlord that was smaller. The upstairs portion of the rental unit is equal to or bigger than the Tenant's previous home. The Tenant was not able to afford the market rent, so the Landlord reduced it to \$1,050.00. The Tenant doesn't use the lower level of the house and shouldn't be compensated for loss of use of something he doesn't use. The Landlord's agent testified that the rental unit is going to be demolished.

After the first flood, the insurance company paid for all repairs, with the exception of the bathroom sink. The Landlord did not clear the drains. After the second flood, the same repair people came in and dried out the basement, removed the lower portion of the drywall and removed the carpets. The insurance company declined to pay for more repairs.

After the third flood, the Landlord had the drains cleared and a camera lowered down the drains. A crushed drain in the driveway was discovered. The Landlord installed hoses to divert water away from the house.

The Tenant gave the following reply to the Landlord's agent's testimony

The Landlord was having difficulty renting the house before the Tenant moved in. The Tenant negotiated a price for renting the whole house.

### **Analysis**

Based on the testimony of both parties, I find that the Tenant rented the whole house for \$1,050.00 per month. Therefore the Tenant is entitled to the use of the whole house.

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.

I find that the Landlord has not complied with Section 32(1) of the Act.

Section 67 of the Act states:

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

With respect to the Tenant's application for compensation for damage or loss, based on the testimony of both parties, I find that the Tenant has established that he has been without use of the downstairs sink since February 1, 2009. Therefore, I award the Tenant the sum of \$300.00 for the devaluation of the tenancy since February 1, 2009

due to the loss of use of the sink. I further find that the Tenant is entitled to a rent reduction in the amount of \$20.00 per month effective April 1, 2010 until such time as the sink is installed in the downstairs bathroom or the tenancy ends in accordance with the provisions of the Act, whichever shall first occur.

Based on the testimony of both parties, I find that the Tenant has established that he rented the whole house and has not had use of the basement for a significant period of the tenancy. The Tenant is applying for a rent reduction of 50% because the basement is approximately the same size as the upper floor. The Tenant does not have full use of the basement, but he can use the basement for some purposes (i.e. storage). I note that the Tenant did not apply to have the Landlord ordered to make repairs to the basement, and therefore I conclude that the Tenant's compensation for loss of use of the basement should be set at a lesser amount. I award the Tenant compensation in the amount of \$1,500.00 for loss of use of the basement caused by the repeated flooding. I further find that the Tenant is entitled to a rent reduction in the amount of \$250.00 per month effective April 1, 2010, until such time as the drainage problem is addressed, the drywall is repaired and carpets installed; or the tenancy ends in accordance with the provisions of the Act; whichever shall first occur.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee in the amount of \$50.00 from the Landlord.

Further to the provisions of Section 72 of the Act, the Tenant may deduct the total amount of his award for compensation and recovery of the filing fee, in the amount of \$1,850.00, from future rent due to the Landlord.

I hereby order that effective April 1, 2010, monthly rent will be \$780.00 (\$1,050.00 less \$20.00 less \$250.00) for the remainder of the tenancy or until the repairs mentioned above are completed, whichever shall first occur.

### **Conclusion**

The Tenant may deduct the amount of \$1,850.00 from future rent due to the Landlord, in compensation for damage or loss.

I hereby order that rent is reduced by \$270.00 per month from and including April 1, 2010, (for a total rent of \$780.00 per month) until the tenancy ends in accordance with the provisions of the Act, or the required repairs are completed, whichever shall first occur.

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.

March 30, 2010

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Date of Decision

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