



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, ERP, RP, RR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for cost of emergency repairs and for money owed for damage or loss under the Act; to order the landlord to make emergency repairs; to make repairs to the unit; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. Part of their evidence confirmed reciprocal service of the notices and of the material intended to be produced in these proceedings as required by statute.

The landlord submitted 7 pages of evidence to the Residential Tenancy Branch on January 4th, 2011, which is two days prior to the hearing. The evidence consisted of a 7 point response letter to the tenant itemizing the issues addressed by the tenant. The other 6 pages consisted of the tenancy agreement. The landlord claimed that he was not familiar with the timelines, that he is Chinese and challenged in understanding the process. The tenant confirmed receipt of the letter. Although the landlord could have been more diligent to submit these documents on time, I find that the tenant will not be prejudiced by accepting the letter as evidence in these proceedings, and proof of a written tenancy agreement was not disputed by the parties.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to have the landlord comply with the repairs he claims are required to the unit?



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Background and Evidence

The rental unit consists of a single detached home located in Surrey. The home is divided into three separate living units. The tenant, his wife and his daughter occupy a portion of the top floor. The fixed term tenancy was based on a one year lease, starting on December 31st, 2009 at a rate of \$500.00 payable on the first of each month.

The agreement included a clause stipulating that the rent would increase to \$650.00 once the tenants secure full time employment. At the end of the lease, the tenancy continued on a month to month basis. The tenant paid a security and pet damage deposits in the combined amount of \$500.00.

The tenant testified that out of frustration with the landlord's lack of cooperation with fixing a number of problems with the unit, he submitted to the landlord a monetary claim dated December 30th, 2010. This is an updated claim from the original \$900.00 claim the tenant filed in his application for dispute resolution, and is itemized as follows:

1- Plugged water drain for 4 months:	\$1632.00
2- Defective microwave/fan oven for 11 months:	\$ 275.00
3- Defective washing machine for 5 months:	\$ 150.00
4- Kitchen tap: to be dealt between parties	\$ 0.00
5- Rat problem: to be dealt between parties	\$ 0.00
6- Laundry room repairs: to be dealt between parties	\$ 0.00
7- Written rent receipts: to be dealt between parties	\$ 0.00
8- Domestic water supply:	\$ 187.00
9- Landlord's use of utilities:	\$ 180.00
10-Skylight leak: to be dealt between parties	\$ 0.00



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Total Compensation Claim: \$2424.00

At the hearing, the tenant acknowledged that the tenancy agreement specified that water supply was the tenant's responsibility: therefore the amount of \$187.00 for this charge is deducted from the tenant's claim. The landlord acknowledged the utility charge: the parties agreed to settle this matter between themselves and the utility charge of \$180.00 is also deducted from the tenant's claim. The claim is therefore adjusted to \$2057.00.

Concerning the outstanding issues, the landlord testified as follows:

- 1- The plugged water drain was caused by an accumulation of the tenant's dog hair.
- 2- The microwave fan was working for ventilation purposes when he tested it. He told the tenant to get his own microwave unit for cooking purposes.
- 3- The washing machine was working at the start of the tenancy and was not part of the agreement.

The tenant stated that there has been no further problems since the landlord fixed the drain on January 2nd, 2011. The tenant said that he has a dog but that dog hair was not the only contributing factor. Concerning the microwave, the tenant reiterated that the fan does not work, and that it is an electrical issue that he is not prepared to investigate.

Analysis

The landlord bears a number of contractual and statutory obligations towards the tenant. Section 35 of the *Residential Tenancy Act* provides in part that the landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection, and that the landlord must complete a condition inspection report in accordance with the regulations.

The landlord did not present evidence of a report to confirm the condition of the appliances at the start of the tenancy.

The *Residential policy Guidelines* provide an estimated useful life in rental accommodations to account for reasonable wear and tear of appliances. With this in mind, the tenant's claim and my findings are set out below:

- 1- The useful life of a microwave is 10 years. In this matter, the evidence established that the built-in microwave fan is the only source of ventilation and is critical to the tenant's living enjoyment. I accept the tenant's evidence that the fan is old, does not work, and needs to be replaced. Therefore I award the tenant the full amount of his claim for \$275.00.
- 2- The parties agreed that the washing machine was not part of the tenancy agreement. Therefore I consider its' use by the tenant a gratuitous commodity. It is not necessary to make a finding of liability and I dismiss that claim.
- 3- Concerning the plugged water drain, the evidence does not allow me to make a finding of complete liability against one party. However, according to the photographs submitted by the tenant and his oral evidence, I accept that the problem cannot be attributed solely to dog hair, and that the landlord did not exercise due diligence to permanently fix the problem promptly. For four months, the tenant had to manually dispose of grey water that was unsightly and left a foul odour in the unit. I award the tenant a rent reduction in the amount of \$125.00 for the period of four months for the sum of \$500.00.



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- 4- As agreed by the parties, the \$180.00 utility bill is not included in the tenant's monetary claim.

Section 33 of the Act outlines the landlord's obligations towards repairs of the rental unit. On the preponderance of the evidence, I find that the rental unit is in need of several repairs. The parties have agreed to resolve these issues between themselves. However, a major leak from the roof or skylight is considered an emergency and I direct the landlord to ensure that this issue is addressed forthwith.

Since the tenant was partially successful, I award him a portion of the recovery of the filing fee in the amount of \$25.00.

Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order totalling \$800.00.

This Order may be registered in the Small Claims 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: January 06, 2011.

Residential Tenancy Branch