# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## Decision

**Dispute Codes**:

MNDC, OLC, ERP, RP

**Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to compel the landlord to comply with the Act and an order for repairs. The tenant was also seeking a rent abatement for repairs not completed.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

**Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Is the tenant entitled to a rent abatement for loss of services and facilities due to failure to repair or maintain?
- Should the landlord be ordered to make repairs and emergency repairs?
- Should the landlord be ordered to comply with the Act ?

The burden of proof is on the applicant to prove the claims and requests contained in the tenant's application.

**Background and Evidence**

The tenancy began in March 1, 2012 and rent is $2,300.00. The tenancy agreement was signed for a fixed term, however, the tenant and landlord agreed that the contract would now be for a month-to-month tenancy.

The tenant testified that the landlord failed to provide a rental unit that was in good repair and the tenant submitted a list of 37 deficiencies which the landlord has failed to address.

The landlord stated that some items were looked after and the landlord is willing to inspect and repair the issues of concern if warranted. The parties agreed that this should be done within one month.

The tenant stated that they are seeking compensation for having no kitchen sink or bathroom sink for a period of time in the lower kitchen. The tenant stated that this was very disruptive.

The tenant also had a concern about the manner in which the utilities were split. The tenant stated that, although the utilities are in the tenant's name, the account covers an additional unit in the complex too and the tenant is expected to collect the other resident's portion of the utilities. The tenant testified that, moreover, the landlord's son has been staying in an out building on the premises reserved for the landlord's storage and the tenant is concerned that his utility bill is inflated because the hydro for the building is on the same account.

The landlord testified that he felt that the utility split was fair and pointed out that, although there was a water heater in the storage shed, no space heaters were used and the hydro usage would be minimal. The landlord testified that his son was there to "keep an eye on things" and his stay would only be temporary. However, the landlord could not give an exact date as to when his son would be gone.

The tenant testified that he was gravely concerned about a recent emergency issue with the sump pump. The landlord stated that he was not made aware of the problem, but made a commitment during this testimony that he would be dealing with the matter immediately.

The tenant testified that the landlord had made representations that the grounds would be seeded with grass and that items cluttering up the exterior would be removed. The tenant stated that there were two unsightly used toilets discarded on the grounds and felt that they should be removed.

The landlord agreed that the lawn care would commence in the near future. The landlord also agreed that any messy items on the grounds would be stored in an orderly fashion near the landlord's storage shed. With respect to the toilets, the landlord stated that they had been used as planters and pointed out that they were actually located on the municipal land bordering the property and could be removed at any time.

The tenant testified that, although the unit was advertised as having two washers and dryers, one set had been removed and the tenant was never compensated.

The landlord acknowledged that the machines were removed and conceded that some compensation was in order.

The tenant was seeking an order that the landlord comply with the Act by giving written notice before accessing the suite.

The landlord felt that he was entitled to come onto the property and access the common areas, being that his storage unit was on site. However, the landlord agreed that if he wanted access to the tenant's unit, he would be required to give written Notice under the Act. The landlord also agreed that he or anyone using his storage, would not interfere with or bother the tenant.

Analysis

I find that the parties have both agreed that the tenancy is now a month-to-month tenancy and not for a fixed term.

In regard to the term in the tenancy agreement that requires the tenant to place the utilities in the tenant's name, even though the service covers another unit and the landlord's storage, I find that this is an unconscionable term. Under section 6 of the Act, I find that the term cannot be enforced.

Therefore, I find that the landlord is required to put the utilities in the landlord's name. I find that the two rental units must each pay a portion of the utilities to the landlord. The landlord will also be responsible for a certain percentage of each invoice in recognition of his storage area. I set the applicant tenant's portion of the utilities at 55% which will be paid to the landlord within 30 days of being presented with copies of the utility invoices.

With respect to any additional utility costs already paid by the tenant to date, I find that the tenant is entitled to compensation from the landlord estimated at $75.00 covering the month of March and April 2012.

With respect to the tenant's loss of a portion of the rental unit that was part of the tenancy, that being the bathroom sink and kitchen sink in the lower area, I find that the temporary loss of these facilities warrants compensation. I set the amount at $150.00.

I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Section 33 of the Act requires the landlord to make emergency repairs without delay.

However, I find that the landlord has now made a clear commitment to address the tenant's list of repairs within one month and has also agreed to take care of the urgent emergency repairs as soon as possible. Should the landlord not meet this commitment, the tenant is at liberty to make an application to force the repairs or to seek compensation.

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is *essential* to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. However a service or facility, other than one that is essential or material, may be restricted or terminated, provided that landlord(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Given the above, I find that the landlord did not comply with the Act in removing the second washer and dryer. I find that the landlord's removal of one of the sets of the full-size washer/dryers has devalued the tenancy and I find that the tenant is entitled to a rent abatement of $100.00 per month. Accordingly, the rent for the unit will now be set at $2,200.00 per month. The tenant is also entitled to retro-active compensation of $200.00 for March and April 2012 for the lack of the laundry appliances.

In regard to the landlord's right to access, I find that section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Notice stating that the landlord will be accessing the unit must include the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

A landlord may also gain entrance if an emergency exists and the entry is necessary to protect life or property. Section 29(2) of the Act permits a landlord to inspect a rental unit monthly in accordance with subsection (1) (b).

Given the above, I do not find it necessary to order the landlord to comply because the landlord has acknowledged that he is aware of the Notice requirement.

However, with respect to general communications between the parties, I find it appropriate to order that all future communications between the landlord and the tenant be in written form and the parties will refrain from communicating in person unless necessary.

**Conclusion**

Based on the evidence, I hereby grant the tenant monetary compensation of $525.00, comprised of $75.00 for additional utilities paid by the tenant for March and April 2012,

$150.00 for the temporary loss of the kitchen and bathroom sinks, $200.00 for the loss of the washer and dryer during March and April and the $100.00 cost of the application.

I hereby order that it is a term of the tenancy agreement that the landlord must place the utilities in the landlord's name and that the tenant will be responsible for 55% of the utility charges.

I also order that the tenancy agreement has been converted by consent to a month-to-month tenancy.

I further order that the rent for the unit will now be reduced from $2,300.00 to $2,200.00 per month due to the loss of one set of laundry facilities.

Finally I order that the parties restrict all communications between them communications to written form unless this is not possible.

If any future disputes arise that cannot be resolved in regards to these repair issues, either party is at liberty to make application for dispute resolution.

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: April 18, 2012.

Residential Tenancy Branch