



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF, O

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants sought the following relief: a Monetary Order for the cost of emergency repairs; a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; an Order compelling the Landlord to make repairs to the rental unit; and recovery of the fee paid to file the application.

Only the Tenants appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant, N.R., testified that she served the Corporate Landlord's agent, K.L. (at the address for service noted on the residential tenancy agreement) by registered mail on February 7, 2015. The Tenants provided the tracking number of the registered mail in evidence. N.R. further testified that she provided four copies of their application material to K.L. to facilitate service of the other Landlords. Under the Act documents served this way are deemed served five days later; accordingly, I find the Landlords were duly served as of February 12, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a Monetary Order for the cost of emergency repairs?
2. Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
3. Are the Tenants entitled to an Order compelling the Landlord to make repairs to the rental unit pursuant to section 32 of the Act?

4. Should the Tenants recover the fee they paid to file their application?

Background and Evidence

The Tenants introduced in evidence the following:

1. A copy of the residential tenancy agreement which confirmed the tenancy began December 1, 2014 and that monthly rent was payable in the amount of \$1,450.00 per month on the 1st of the month.
2. A copy of the Move In: Condition Inspection Report dated November 28, 2014 which included the following notations:
 - a. Oven: dirty;
 - b. Venetian blinds: poor/dirty;
 - c. Kitchen “fan”: dirty;
 - d. Carpets in laundry need to be removed and replaced with tile;
 - e. Most blinds need replacing;
 - f. In-suite wall on tub pulling away; and
 - g. Blinds: dirty/worn/damage.
3. Photos of the rental unit which depicted the condition of the stove and range hood, dishwasher, toilet seat, laundry room tub and sink; dryer lint build up; cracked master bathtub; mold build up on under the shower door; and, owners garbage left in the garage.
4. Written submissions from the Tenants setting out the relief sought.
5. Invoices for expenses incurred by the Tenants.
6. An email from the Landlord’s agent, K.L., dated December 1, 2014, wherein K.L. writes that “...all repairs will be dealt with in a timely manner...”
7. An email from K.L. dated January 24, 2015 wherein K.L. writes:

“...regretfully [the Landlords] will not reimburse you for the stove and now they changed their minds to not even reimburse you for the \$268. I would suggest to speak to someone at the Tenancy Branch in Burnaby with your concerns, contact information below and website”...

Attached to the email noted above was an email from the Landlord to K.L. where in the writer wrote as follows:

“We don’t want to pay anything not even 268\$; let them go to the tenancy branch, whatever they say we will follow, they didn’t ask anybody before doing the changes.”

[Reproduced as Written]

The Landlords did not file any evidence.

The Tenants provided further evidence in the form of affirmed testimony as follows.

Stove and Range Hood

The Tenants stated that approximately one week after they moved in, they contacted the Landlord’s agent, K.L., about the issues with the stove and range hood. The Tenants claim that they could not cook as the range hood dripped rusty grease onto the stove. According to the Tenants, K.L. indicated he would talk to the Landlords and get back to the Tenants. The Tenants testified that K.L. initially told them that they would be reimbursed for these purchases. The Tenants purchased a range hood on December 5, 2014 for \$87.79 and stove on December 20, 2014 for \$445.88. Both receipts were introduced in evidence by the Tenants and totalled **\$533.67**.

Dryer Tubing

The Tenants testified that when they moved into the rental unit they noticed that the tubing connected to the dryer was clogged with lint because the tubing had been connected with duct tape. This caused a significant amount of heat and created a fire hazard. Again the Tenants told the Landlord’s agent during the first week of December that they were concerned about the risk associated with the dryer and asked that the Landlord make the necessary repairs. When the Landlord failed to reply, the Tenants purchased new tubing for both inside and outside the rental unit and reconnected the dryer exhaust on January 5, 2015 for a cost of **\$29.37**. The receipt for this purchase was introduced in evidence.

Blinds and Wands

The Tenants further testified that when they first viewed the rental unit, K.L., promised them that the Landlords would replace the blinds and wands prior to them moving in. When they moved into the rental unit, they realized that this had not been completed. The Tenants were assured by K.L., that the blinds and wands would be replaced within the month. The Tenants then asked K.L. again when the blinds and wands were going to be replaced at which time K.L. allegedly told them “the owners aren’t willing to do anything”. Notably, the move in condition inspection report notes that the blinds needed to be replaced.

The Tenants sought reimbursement of the sum of **\$136.96** for the cost of replacing the blinds. The receipts were introduced in evidence by the Tenants.

Laundry Room Pipe Replacement

The Tenants testified that the laundry room utility sink pipe broke causing water to accumulate on the floor. Again the Tenants called K.L. about the broken pipe and asked that it be repaired. K.L. responded "the Landlords are not going to do anything". The Tenants submitted photographs of the utility sink which confirm the sink was in very poor condition. The Tenants submitted that the sink and faucet required replacing due to their condition as it was not possible to simply replace the broken pipe. The Tenant, R.L., purchased a pipe and utility sink and faucet and attended to their installation; the associated costs were \$13.01 for the pipe, \$49.00 for the sink, and \$53.75 for the faucet. Receipts for all three purchases, totalling **\$115.76**, were introduced by the Tenants.

Toilet

The Tenants testified that they replaced the toilet at a cost of **\$32.50** including tax. They stated that they lost the receipt for this purchase.

Section 32 Repair Order

The Tenants also sought an Order, pursuant to section 32, that the Landlords make the following repairs;

1. Replace the lock between the rental unit and the downstairs to prevent the downstairs occupants from accessing the rental unit.
2. Install weather stripping on the front door to prevent heat loss. (Notably, the Tenants pay for their heat in addition to the cost of their rent.)
3. Repair the gas fireplace and ensure it is operable.
4. Replace the flooring in the laundry room as the carpet was damaged when the utility sink pipe broke.
5. Remove the garbage left by the Landlord's in the garage (which is rented by the Tenants) or compensate the Tenants for loss of their storage area.
6. Professionally clean the carpets; the Tenants testified that the Landlord's agent assured them this would be done before they moved in.
7. Repair or replace the clothes dryer as it currently takes 1.5 hours to dry a load of laundry.
8. Repair or replace the dishwasher as it is no longer operable.

The Landlord did not attend to dispute any of the above claims.

Analysis

I accept the Tenant's undisputed testimony that the Landlord's failed to make repairs, emergency or otherwise, and failed to honour their contractual and statutory obligation to ensure that the rental unit meets health, safety and housing standards and is reasonably suitable for occupation given the nature and location of the property.

The move in condition inspection report speaks volumes as to the condition of the rental unit when the Tenants moved in. I find that the Landlords are in breach of the Act and the tenancy agreement.

Section 33 of the Act provides as follows:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Based on the undisputed testimony of the Tenants, the evidence filed, and pursuant to sections 33 and 67 of the Act, I order that the Landlord's reimburse the Tenants the following expenses associated with the emergency repairs done by the Tenants:

Stove	\$445.88
Range hood	\$87.79
Dryer tubing and aluminium tape	\$29.37
Laundry room pipe	\$13.01
Laundry room utility sink	\$49.00
Faucet for laundry room utility sink	\$53.75
TOTAL	\$678.80

I accept the Tenants undisputed testimony that the Landlord's agent assured them that the blinds and wands would be replaced prior to them moving into the rental unit.

The relevant portions of section 32 of the Act provides as follows:

Landlord and tenant obligations to repair and maintain

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 Landlords failed to replace the blinds and wands as promised by the Landlords' agent, and in doing so failed to honour their contractual obligations and maintain the residential property as required in section 32. As the Tenants have replaced the blinds and wands, they are entitled to compensation pursuant to section 67; accordingly, I order, pursuant to sections 32 and 67 that the Landlord compensate the Tenants **\$136.96**.

I also grant the Tenants recovery of the **\$50.00** fee paid to file their application. In total, the Landlord is to compensate the Tenants the sum of **\$865.40**. The Tenants are permitted to deduct this sum from their next month's rent.

As some of the requested necessary repairs remain to be completed, I also Order, pursuant to sections 32 and 33 of the Act, that the Landlord **within two weeks of the date of this my decision,** complete the following repairs

1. The Landlord shall install a lock between the rental unit and the basement suite to ensure both units are secure. Should the Landlord fail to install this lock within two weeks of the date of this decision, the Tenants shall be permitted to deduct the sum of \$100.00 per month from their rent and shall be at liberty to reapply for further Orders.
2. The Landlord shall install weather stripping to the rental unit's front door. Should the Landlord fail to install this lock within two weeks of the date of this decision, the Tenants shall be permitted to deduct the sum of \$25.00 per month from their rent and shall be at liberty to reapply for further Orders.
3. The Landlord shall remove the carpet in the laundry room and replace it with suitable flooring. Should the Landlord fail to remove the carpet and replace it with suitable flooring within two weeks of the date of this decision, the Tenants shall be permitted to deduct the sum of \$25.00 per month from their rent and shall be at liberty to reapply for further Orders.
4. The Landlord shall hire professional cleaners to clean the carpets in the rental unit. Should the Landlord fail to do so within two weeks of the date of my decision, the Tenants shall be at liberty to hire professional cleaners and deduct the cost from their next months' rent pursuant to section 67 of the Act.

5. The Landlord shall repair or replace the clothes dryer in the rental unit. Should the Landlord fail to do so within two weeks of the date of my decision, the Tenants shall be at liberty to purchase a dryer and deduct the cost from their next months' rent pursuant to section 67 of the Act.

Section 27 provides that a Landlord must not terminate or restrict a service or facility. I find that the gas fireplace is a service which is essential to the Tenant's use of the rental unit as provided for in section 27(1)(a) of the Act. Accordingly, I further Order pursuant to sections 27, 32 and 33 of the Act, that the Landlord **within two weeks of the date of this my decision**, repair or replace the gas fireplace. Should the Landlord fail to repair or replace the gas fireplace, within two weeks of the date of this decision, the Tenants shall be permitted to deduct the sum of \$150.00 per month from their rent and shall be at liberty to reapply for further Orders.

I find that the garage storage is a facility which is essential to the Tenant's use of the rental unit. Accordingly, I further Order, pursuant to sections 27, and 32 of the Act, that the Landlord **within two weeks of the date of this my decision**, remove the Landlord's garbage and other items from the garage. Should the Landlord fail to remove their garbage and other items from the garage, within two weeks of the date of this decision, the Tenants shall be permitted to deduct the sum of \$200.00 per month from their rent and shall be at liberty to reapply for further Orders.

I decline the Tenants' request for compensation for the cost of replacing the toilet seat due to the lack of evidence filed to support this claim.

Conclusion

The Landlord shall compensate the Tenants the sum of \$817.96 which includes the cost of repairs, emergency and otherwise, they have incurred with respect to the rental unit and the fee paid to file their application. The Tenants shall be permitted, to reduce their next months' rent by this sum.

Within two weeks of the date of this my decision, the Landlord shall make necessary, failing which, the Tenants shall be permitted to make further deductions to their monthly rent and be at liberty to apply for further 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 *Residential Tenancy Act*.

Dated: March 30, 2015

