



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNICITY ENTERPRISES INC. AS PART OF NOURA
CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, MNDCT, FFT

Introduction

On December 6, 2019, the Tenant made an Application for Dispute Resolution seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on January 28, 2020 and was subsequently adjourned to be heard at 9:30 AM on February 21, 2020 as there was not enough time to complete the hearing during the original proceeding.

The Tenant attended the adjourned hearing. C.B., L.K., and T.O. attended the adjourned hearing as well, as agents for the Landlord. All in attendance provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2018. Rent was established at \$2,800.00 per month, due on the first day of each month. A security deposit of \$1,400.00 was paid.

The Tenant advised that he has made several requests to the Landlord for numerous repair issues and the Landlord has been negligent in attending to these items. He stated that there is a gas fireplace in the rental unit; however, the thermostat does not work as the control box is broken. He advised that the Landlord agreed that the control box would be replaced but they did not set a precise date to do so. He did not submit any evidence to support that there is a problem with the control box of the fireplace.

T.O. advised that this problem was first reported on December 10, 2018 and a heating company had been sent out on four, separate occasions to address the issue. The technicians from this company have advised her that, although the Tenant has alternate forms of heating in the rental unit, he uses this appliance as the main source of heating. However, the fan on this appliance is not designed to run 24/7 and the Tenant's continual use of this burns out the motor. She stated that they have come to an agreement that the Landlord would have the issue with the thermostat and control box fixed by a week from the adjourned hearing date.

The Tenant advised that there has been a problem with the mouse infestation for over a year now and two or three people have been attempting to fix this problem. Mouse poison has been put down by the Landlord and he has been advised that the Landlord will send out a repair person, the week following the adjourned hearing, to close off any holes that may allow mice to enter the rental unit.

T.O. advised that any accessible holes for mice to potentially enter the rental unit were repaired prior to the Tenant moving in. Since being advised of the problem, repair people have been sent to determine if there is still an issue and it is apparent that mice are gaining access to the rental unit because the Tenant leaves the garage door wide open. Despite this, the Landlord has agreed to replace the weather stripping in the garage, put up a 2 X 4, and install flashing and metal plates by the end of the week of

February 29, 2020 to ensure that mice cannot enter through the garage, if the Tenant kept the garage door closed.

The Tenant advised that there has been a problem with the septic tank as it appears to be backing up due to an unknown maintenance issue. He would like this tank serviced and it is his opinion that he should receive a report on the health of the tank.

T.O. advised that the septic tank had been pumped and cleaned a week ago; however, she does not receive a report along with such services. She stated that she will attempt to contact the service company and obtain a report to send to the Tenant. She stated that she is certain that this company pumped and cleaned the septic tank.

The Tenant confirmed that the septic tank was pumped out last week and there have been no issues with it since.

The Tenant advised that in the past, there were trees near the power lines that had fallen during a windstorm and had knocked out his power. While the Landlord had an arborist deal with that issue, it is his opinion that there are other trees near the power lines that are in danger of falling, potentially causing the same issue again, in the event of another windstorm. He stated that he is not a certified arborist and has no qualifications to make this determination despite the Landlord having a professional arborist already determine that there is no current issue with the state of the existing trees.

C.B. advised that when there was the original power outage, an arborist was sent to manage the problem and trim any trees that may pose a future, similar problem. It is his understanding that the tree removal specialists examined the remaining trees and determined that there were no concerns. He stated that the property is a heavily forested area, that the trees near the power lines are on a creekside, and that the cutting or removal of these trees are prohibited by the municipality. When this problem was first addressed by the Landlord, they were actually fined by the city, so the Landlord is also constrained by the municipality in even entertaining the Tenant's request. He also reiterated that the Tenant has not provided any evidence to support his belief that any trees near the power lines are a hazard currently.

The Tenant advised that there are potholes in the driveway that continually get larger the more he drives in and out of the property. This has been an issue since he moved in and the Landlord has agreed to fix this. He stated that if not repaired, his vehicles will likely suffer from damage.

T.O. advised that on a few occasions, the Landlord has agreed to have gravel delivered to the property to have these potholes filled; however, the Tenant did not want gravel as a solution. She stated that this is not a hazard; however, the Landlord has contracted a bobcat to grade the driveway and fill any potholes by a week from the adjourned hearing.

The Tenant advised that there has been a water leak in the garage that he had reported to the Landlord over a year ago. The Landlord had some work done but it did not solve the issue of the leak. He did not submit any evidence to support his claim that there is a leak in the garage, but he stated that the Landlord would fix this issue.

T.O. advised that a roofer was dispatched a year ago to address this issue, and deck boards were removed and caulked. She stated that another roofer would be dispatched within a week of the adjourned hearing to address this issue, and it should be easier to correct now as the gutters have been cleaned.

The Tenant advised that the rental unit is 40 years old, that the insulation is insufficient, and that using the baseboard heating is expensive. He stated that he has hydro bills to support the high cost of using the baseboard heating, but he did not submit this as documentary evidence. He is requesting that the Landlord provide additional heating, such as another fireplace in a different room in the rental unit.

T.O. advised that the rental unit is equipped with adequate baseboard heating throughout the rental unit; however, it is the Tenant's choice not to use this because he wants to save money. The rental unit is also equipped with a gas fireplace and a wood burning fireplace. This request is based on the Tenant's own decision not to use the heating appliances already provided to him and it is the Landlord's position that there is no requirement to accommodate his requests.

The Tenant stated that the fireplace is not airtight and will not distribute heat adequately, and that the wood fireplace is not an efficient source of heat. He did not provide any evidence to support this or submit any evidence to demonstrate that the rental unit does not comply with health, housing, or safety standards required by law.

The Tenant advised that there is a bush on the property that bears hide behind and they will jump out and scare his wife. He stated that the Landlord had agreed to have this bush trimmed.

T.O. advised that the property is heavily forested, that there are many bushes on the property, and that animals will naturally be present. She stated that despite this not being a necessity, someone will be dispatched within a week of the adjourned hearing to trim this bush as a courtesy to the Tenant.

The Tenant advised that there were missing downspouts that were required to have water drain from the eaves. This is required to prevent leaks, but he is not sure if this issue has been repaired already.

T.O. advised that the gutters were cleaned over the last week and that a gutter repair person was dispatched on the day of the adjourned hearing to address any gutter repair issues.

The Tenant also made a number of requests for monetary compensation due to the power failure over a year ago. As an electrical engineer, it is his opinion that such a power failure could produce voltage spikes that would damage electronic equipment. He advised that he was seeking compensation in the amount of **\$150.00** for the cost of replacing a CD player that was damaged. However, apart from his testimony, he has submitted no evidence to support his claim that this item was damaged due to this power failure. He is unsure of how much this CD player cost originally, and it was approximately eight to ten years old. He did not submit any evidence to support the cost of the claim that he was seeking, and he confirmed that he has not purchased any Tenant's insurance to protect his property.

C.B. confirmed that a windstorm had downed many trees in the area that caused a power outage. He referenced an email submitted as documentary evidence indicating that the Landlord's insurance would not cover this issue and that it is up to the Tenant to have his own insurance in the event of this possibility.

T.O. advised that after speaking with an electrician, it is their perspective that electronic items should not be affected by a power failure unless they were in operation at the time of the failure. While they accept that it could be possible that these electronics could have been damaged by a power failure despite them not being in use, it is doubtful that this would realistically occur. She stated that the Landlord's insurance will not cover the Tenant's belongings inside the rental unit. She stated that she advised the Tenant in September 2019 that it would be in his best interest to purchase Tenant's insurance, but he has neglected to do so. As well, the Tenant has not provided a receipt to support the cost of this or even a picture of the item to corroborate that this was damaged and lost.

The Tenant questioned how all of his electronics would have been damaged at the same time as the power failure, if not as a result of the power failure. He stated that due to his background, he knows that electronics are “partially alive” even when only plugged in and not in use.

The Tenant advised that he was seeking compensation in the amount of **\$118.00** for the cost of replacing a percussion massager that was damaged due to the power failure. However, apart from his testimony, he has submitted no evidence to support this claim, to support the value of this item, or to support the cost of replacement. He stated that it was approximately five years old.

T.O. advised that there was no evidence that this item was damaged. Furthermore, she did research online and found a newer model with an additional heat function for \$60.00.

The Tenant advised that he was seeking compensation in the amount of **\$380.00** for the cost of replacing a convection toaster oven that was damaged due to the power failure. However, apart from his testimony, he has submitted no evidence to support this claim, to support the value of this item, or to support the cost of replacement. Although, he did state that it was “probably” five years old.

C.B. advised that the Tenant did not provide any supporting evidence apart from a screenshot of replacement value of a similar oven. However, they have found lower prices for this same model. T.O. advised that a photo that the Tenant provided appeared to be of an older model than the model that he was requesting compensation for.

The Tenant advised that he was seeking compensation in the amount of **\$119.00** for the cost of replacing a food processor that was damaged due to the power failure. However, apart from his testimony, he has submitted no evidence to support this claim, to support the value of this item, or to support the cost of replacement. Although, he did state that he “would think that it was around five to seven years old.”

T.O. advised that the Landlord did not receive any information or evidence with respect to a food processor.

The Tenant advised that he was seeking compensation in the amount of **\$106.00** for the cost of replacing LED lamps that were damaged due to the power failure. However, apart from his testimony, he has submitted no evidence to support this claim, to support

the value of this item, or to support the cost of replacement. In addition, he stated that it was “difficult” to provide evidence to support this cost as he had some replacement bulbs already.

T.O. advised that according to the Tenant’s own evidence listing the expenses he incurred, he had already taken it upon his own initiative to illegally deduct some items of compensation, totalling \$660.83, from a previous month’s rent, without the Landlord’s authorization. In addition, he submitted a receipt for some of these items, that was provided to the Landlord, to justify why he elected to reduce his rent, so it is not clear why the Tenant is claiming for this again.

The Tenant acknowledged that he arbitrarily chose to withhold illegally an amount from rent without the written authorization of the Landlord, and he stated that he would like to withdraw this claim of \$106.00. The Tenant was cautioned that withholding the rent contrary to the *Act* and without the written consent of the Landlord may lead to a Notice to end his tenancy.

The Tenant advised that he was seeking compensation in the amount of **\$650.00** for the cost of replacing a radio that was damaged due to the power failure. However, apart from his testimony, he has submitted no evidence to support this claim, to support the value of this item, or to support the cost of replacement. He stated that the vacuum tubes were destroyed and that the radio was “probably” two years old.

T.O. advised that the Tenant did submit a photo of this item and she attempted to do research on the replacement value; however, the Tenant was not clear on the number of vacuum tubes required, that the prices of these tubes vary substantially, and that the Tenant provided limited information on his actual loss. Again, she noted that the Tenant did not purchase his own Tenant’s insurance.

The Tenant advised that the cost of these tubes is \$250.00 each, in US currency, plus shipping. He has not replaced these yet as he has a lower powered version of a radio that is sufficient for now.

The Tenant advised that he was seeking compensation in the amount of **\$414.00** for the cost of replacing food in his fridge that was damaged due to the power failure. He was without a fridge for 11 days. Apart from his testimony, he has submitted no evidence to support this claim, to support the value of the food loss, or to support the cost of replacement. He based the amount of this claim on the cost of filling up his fridge with groceries; however, he did not submit this receipt either.

T.O. stated that when she was advised that the fridge was not cooling, a technician had advised to unplug the fridge for an hour and then plug it back in. As that did not solve the problem, she advised the Tenant to get a cooler to store his perishables until she bought him a replacement fridge, which was delivered on October 10, 2019. The Landlord did not receive any receipts for the cost of the Tenant's groceries. As well, the Tenant had also illegally deducted an amount off a previous month's rent as compensation for this issue.

Finally, the Tenant advised that he was seeking compensation in the amount of **\$660.00** for the cost of being unable to cook and having to eat out for 11 days. However, he stated that he is now only seeking compensation for five days at an estimated cost of **\$300.00**.

T.O. advised that the Landlord was not even aware that the Tenant was going out for dinner every night until receiving this claim. She stated that the Tenant's stove and cooktop were fully functional, so the Tenant never lost the ability to cook his own food, so she is confused about this claim. In addition, the Tenant has already taken it upon himself to compensate himself for any loss by illegally deducting an amount from rent.

C.B. acknowledged that the Landlord actually offered the Tenant compensation in the amount of \$100.00 per day for the day and a half when the power was out; however, the Tenant did not accept this. In addition, the Landlord provided the Tenant with a generator to manage the loss of power issue.

The Tenant stated that this claim was a "conservative request" and that it is "difficult, if not impossible to cook three meals a day" without the use of a fridge.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a state of decoration and repair that "complies with the health, safety and housing standards required by law" and "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

With respect to the Tenant's requests for a multiple Repair Orders, each issue will be addressed as follows:

- 1) **Gas fireplace control box and thermostat** – I do not find it necessary to grant this Order as the Landlord has already made plans to have this issue fixed as of the writing of this decision.
- 2) **Mouse infestation** – I do not find it necessary to grant this Order as the Landlord has already taken steps to ensure that mice cannot enter the garage. However, these steps are inconsequential if the Tenant continues to leave the garage door open.
- 3) **Septic tank** – I do not find it necessary to grant this Order as the Landlord had already addressed this issue and the Tenant acknowledged that there have been no issues since. Furthermore, there is no requirement in the *Act* for the Landlord to provide a report to the Tenant about the condition or status of the septic tank.
- 4) **Downed trees** – I do not find that I am satisfied from the Tenant's evidence that this Order should be granted as he has submitted insufficient evidence or qualifications to establish that the existing trees are a hazard, other than his personal opinion.
- 5) **Potholes** – I do not find it necessary to grant this Order as the Landlord will have addressed this issue as of the writing of this Decision. Furthermore, the Tenant has provided insufficient evidence to support that the requirements under Section 32 of the *Act* apply to the driveway of the residential property or how this issue does not comply with health, safety, or housing standards required by law.
- 6) **Garage water leak** – I do not find it necessary to grant this Order as the Landlord will have addressed this issue as of the writing of this Decision.
- 7) **Insufficient insulation** – I do not find that I am satisfied from the Tenant's evidence that this Order should be granted as he has submitted insufficient evidence, other than his personal opinion, that the insulation does not comply with health, safety, or housing standards required by law. Furthermore, the consistent evidence is that the rental unit is equipped with multiple sources of heat, but it is the Tenant's reluctance to use the baseboard heating despite knowing that this form of heating was installed in the rental unit when he elected to rent it.
- 8) **Bush on the property** – I do not find that I am satisfied from the Tenant's evidence that this Order should be granted as he has submitted insufficient evidence to support that the requirements under Section 32 of the *Act* apply to this part of the residential property or how this issue does not comply with health, safety, or housing standards required by law. Furthermore, even if the Landlord were to trim or remove this foliage, as the Tenant lives in a wooded area and

animals freely wander in nature, it would be unreasonable to expect the Landlord to be responsible for removing any foliage that an animal may or may not occupy.

- 9) **Missing downspouts** – I do not find it necessary to grant this Order as the Landlord has addressed this issue prior to the hearing and a gutter repair person was dispatched on the day of the adjourned hearing to address any further gutter repair issues.

As a result, I dismiss the Tenant's requests for the above-mentioned Repair Orders as they have either already been addressed by the Landlord, they have not been substantiated as necessary, or they have not been supported as being part of the Landlord's responsibility under Section 32 of the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Furthermore, Policy Guideline # 5 outlines a party's "legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided."

Regarding the Tenant's claims for compensation, each issue will be addressed as follows:

- 1) With respect to the Tenant's claims of electronics that were damaged due to the power failure, while it is his professional opinion that electronics can be damaged from a power failure just by being plugged in, I find it important to note that the burden is on the Tenant to prove the existence of his loss. When reviewing the Tenant's claims for compensation for his loss of electronics, I do not find that the Tenant has submitted sufficient evidence to support that he in fact did lose these items. Furthermore, his ambiguous answers in describing the age or condition of these items causes me to doubt the reliability of his submissions on these items. As well, he submitted limited evidence with respect to the replacement value of

these electronics. As such, I am skeptical of the legitimacy of these claims as presented and I am not persuaded by the Tenant's submissions of any loss.

Furthermore, the undisputed evidence is that the Tenant neglected to have his own Tenant's insurance, which may have covered these items if they had been damaged as alleged. As the Tenant has not demonstrated any attempts to mitigate his loss of personal property, and as I am not satisfied that he substantiated that he even suffered a loss of these electronics, I dismiss his claims for \$150.00, \$118.00, \$380.00, \$119.00, \$106.00, and \$650.00 in their entirety.

- 2) With respect to the Tenant's claim for compensation in the amount of **\$414.00** for the cost of replacing food in his fridge, the consistent and undisputed evidence is that the Tenant was without a fridge for approximately 11 days. While I can reasonably infer that the Tenant may have suffered some loss of groceries, I find it important to note that he has submitted insufficient evidence to support the extent of this loss. He stated that he based his request for compensation on the cost to replace the lost groceries; however, he did not even submit that receipt to support his claim.

Furthermore, while T.O. suggested that the Tenant store his food in a cooler to mitigate his loss, the Tenant openly dismissed this as not being a feasible option, but it is not clear to me why. As the Tenant has not demonstrated any attempt to mitigate this loss, and as I am not satisfied that he substantiated that he suffered a loss totalling his requested amount, I dismiss this claim in its entirety.

- 3) Finally, with respect to the Tenant's claim for compensation in the amount of **\$300.00** for the cost of being unable to cook for five days, the Tenant made no submissions on any defective or damaged cooking appliances in the rental unit. Thus, it is unclear from the Tenant's submissions how he was unable to cook meals, necessitating his claims for eating out. While I can reasonably infer that not having a fridge made it more difficult to have available groceries, I still do not find that this would support his requirement to eat out. Furthermore, the Tenant provided insufficient evidence that he did in fact eat out and incur these expenses. More importantly, the Tenant already took it upon himself to compensate himself illegally by withholding an arbitrary figure from a previous month's rent without the Landlord's written consent. As the Tenant has failed to provide compelling evidence to support his loss, and has already seemingly compensated himself already, I dismiss this claim in its entirety.

As an aside, I have not made any findings with respect to the arbitrary amount that the Tenant has withheld from past rent without the Landlord's written authorization. The onus would be on the Landlord to pursue recovery for any potential rent arrears if they so choose.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

As I am not satisfied of the Tenant's claims, I dismiss the Tenant's Application in its entirety.

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 2, 2020

Residential Tenancy Branch