



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: RR, ERP, RR and FF

Introduction

This application was brought by the tenant seeking orders for repairs and emergency repairs and a rent reduction for a period during which his rental unit suffered flooding and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the tenant withdrew the claims for repairs as the required work was completed or well underway.

Issue(s) to be Decided

This application requires a decision on whether the tenant is entitled to a rent reduction for the loss of quiet enjoyment of the rental unit.

Background and Evidence

The first tenancy began March 1, 2008. Rent is \$725 per month and the landlord holds a security deposit of \$362.50.

During the hearing, the tenant gave uncontested evidence that while he was home with the flu, water began leaking in to his rental unit on December 31, 2008. He stated that he immediately called the building manager who advised him that he was aware of the problem as units in two of the floors above him were experiencing similar leaks. According to the tenant, the building manager said the situation was a result of roof leaks and that he would look into it after the weekend. December 31st was a Wednesday.

The tenant stated that, in spite of repeated calls, it was not until January 6, 2009 that a plumber finally arrived to repair what turned out to be a leak in one of the pressure lines in the wall in one of the units above.

The following day, a service person attended to vacuum the water out of the carpets, stating when he left that more work was required but the landlord had authorized only the one visit.

The building manager gave evidence that he had encountered difficulty in getting service people to deal with the problem due to the holiday season and the fact that the city had been experiencing very heavy snowfalls.

He said that he had attended the rental building on January 1, 2009 and examined the roof to see if that was the source of the leak and that he had responded as quickly as possible.

Toward the end of the flooding, he had offered the tenant accommodation in another building he manages, but the tenant declined as he had come to believe that unit had suffered some sort of infestation and the rent was an additional \$100 and more than he could afford.

The tenant stated that the day after the cleaning, the odour was so offensive that he stayed in a hotel.

Analysis

Resident Policy Guidelines 16-3 notes that a rental agreement is a contract which, if breached by either party, may entitle the other to damages. While in this instance, the tenant alleges that the landlord was negligent, it is not necessary for there to have been negligence for the tenant to qualify for damages.

As noted in the guideline:

“If...the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 32 of *Act* which deals with the landlord's duty to repair and maintain a rental unit states that the landlord must do so to a standard that complies with the health, safety and housing standards required by law. Section 28 of the *Act* entrenches the tenants' rights to quiet enjoyment of the rental unit, and I find that right has been breached by the leak into the rental unit.

While I acknowledge the property manager's efforts to resolve the problem with the challenges of the weather and season, I find that the tenant suffered the loss of full use of the rental unit for a week, and in fact, spent much of that week attempting to clean up and mitigate the damage caused by the leaking.

Conclusion

Therefore, I find that the tenant is entitled to a rent reduction of \$180, approximately the equivalent of one week's rent. I further find that the tenant is entitled to recover the \$50 filing fee for this proceeding from the landlord.

I hereby authorize and order that the tenant may recover the full amount of \$230 by withholding that amount from the rent for February 2009.

January 19, 2009

Dispute Resolution Officer