



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNDC, RP & RR

Introduction

This hearing dealt with an application by the tenant seeking Orders that the landlord complete repairs to the rental unit, that the rent be reduced due to required repairs and damage or loss suffered due to a breach of the covenant of quiet enjoyment by landlord. Both parties were present for the hearing and were provided the opportunity to be heard and to respond to the evidence of the other party.

Issues to be Determined

Is the tenant entitled to a rent reduction and damages due to the landlord's failure to complete repairs to the rental unit?

Background and Evidence

The parties entered into a tenancy agreement effective June 28, 2001. The tenancy agreement does not indicate the effective possession date; however, I accept that the tenancy began as of July 1, 2001. The tenant paid a security deposit of \$375.00 on June 28, 2001. The current monthly rent is \$650.00 for this two bedroom apartment.

The tenant submitted that on March 25, 2009 there was flood in the rental unit at approximately 3:30 a.m. A hot water pipe burst and flooded the bedroom and spread out into the hallway. The tenant stated that the landlord brought in a restoration company and for fifteen days there were eight fans running to dry out the apartment.

The tenant stated that since then there has been no work completed to repair the rental unit. The tenant was under the impression that the carpets are to be changed and that drywall repair work is to be completed. She stated that there has been no communication from the landlord. The tenant stated that her grandson is sleeping on the floor in the bedroom while they wait for the landlord to complete repairs.

The tenant sent a letter by fax to the landlord and has not received a response. The landlord has not offered to provide any rent reduction to the tenant.

The agent for the landlord that appeared for the hearing was unable to provide any insight into the situation. The agent could not explain why the tenant's letter was not answered or explain why it has taken several months to have the repairs completed to the rental unit. The agent in the hearing stated that another agent is responsible for these issues; however, he was told to appear for this hearing. The agent did state that

as of the date of this hearing the restoration company has indicated that work will begin shortly to repair the unit.

Analysis and Findings

I grant the tenant's application and find that the landlord has breached the covenant of quiet enjoyment. I find that the landlord has failed to provide any explanation or evidence to satisfy me that there was a satisfactory reason that the repairs were delayed this long.

I accept that the tenant has lost some use of the rental unit and that the tenant's quiet enjoyment has been impacted by the landlord's failure to communicate with her or respond to her inquiries due to the significant delay in getting the unit repaired. Section 32 and 33 of the *Act* require the landlord to repair the damage caused by the water leak and section 28 requires that the landlord complete the repairs in a manner and fashion which does not interfere with the tenant's quiet enjoyment of the rental unit. I have determined that one bedroom, plus some wall space in the hallway, is about 25% of the total useable space in the rental unit. As the tenant has not lost all the use of the space I find that the tenant has lost the use of approximately 12.5% of the rental unit.

I am persuaded that the landlord has unreasonably delayed the repairs of this rental unit. As a result I award the tenant compensation for the sum of \$548.12 comprised of loss of use of a portion of the rental unit and loss of quiet enjoyment. This sum is based on a loss of use of the rental unit by 12.5 percent, increased hydro cost of \$20.00 and half a month's rent for loss of quiet enjoyment.

I calculate the award as follows:

Loss of use:	$\$650 \times 12.5\% = \$81.25 \times 2.5 \text{ months} = 203.12$
Loss of quiet enjoyment	$= \$300.00$
Extra hydro expense	$= \$20.00$
Total	$= \mathbf{\$548.12}$

I deny the tenant's request for damages to replace possessions which were damaged by the flood. There was no evidence that the flood was caused by negligence or failure to maintain the property by the landlord.

The tenant may deduct the sum of **\$548.12** from her next month's rent in satisfaction of this Order.

Conclusion

I grant the tenant's application in part. I have determined that the landlord failed to take reasonable measures to ensure that the repairs to the rental unit have been completed in a reasonable period of time and has failed to protect the tenant's quiet enjoyment of the rental unit by communicating with the tenant about the progress for the repairs and failing to respond to the tenant's attempts to communicate.

Dated June 23, 2009.

Dispute Resolution Officer