



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC FF

Introduction

This hearing dealt with an application by the tenants for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement. Both tenants and both landlords attended the teleconference hearing.

Issue(s) to be Decided

Are the tenants entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 1, 2008, with monthly rent of \$1200 for a one bedroom condo in a strata building. On November 30, 2008 water leaked into the tenants' suite as a result of flooding in another suite in the building. The tenants called the landlord to inform them, and the landlord contacted the strata property management company. On the same day, a restoration company hired by the strata attended at the building to begin to address the problem.

The restoration crew first placed fans in the suite for one week to dry it out. The submission of the tenants was that for this week, their suite was extremely warm. The crew then ripped up much of the laminate flooring and the baseboards in the rental unit, in the entry way, kitchen, dining area and halfway into the living room and pantry, thereby exposing the bare concrete floor underneath. Large sheets of cardboard were taped down onto the concrete flooring. The crew also cut holes in the walls in the dining room and above the shower, removed the door frame around the bathroom door, and cut holes in the baseboards of the bathroom vanity and the kitchen. The rental unit

remained in this condition until February 16, 2009, when the restoration crew began the restoration work. The tenants submitted that their tenancy was devalued for approximately three months, as they were unable to entertain, decorate, properly clean or enjoy their suite, and they sought compensation equivalent to 40 percent of their rent for those three months, for a total of \$1440 in compensation.

The second part of the tenants' claim addressed the expenses that the tenants incurred over the three days that the floors were repaired, from February 16 through February 19, 2009. The testimony of the tenants was that both the restoration company and the landlord repeatedly told the tenants that they would be able to live in their suite throughout the restoration. Because of those assurances, the tenants did not make alternate arrangements to stay elsewhere while the floors were being replaced. When the tenants came home on February 16, 2009 they realized the suite was not inhabitable, as tools, large equipment and supplies were left all over the suite and the kitchen and bathroom were inaccessible. The tenants incurred expenses for two nights in a hotel and some meals over the three day period, until they were able to return to their suite. The tenants have claimed \$507.50 for these expenses.

The response of the landlord was as follows. As soon as the landlord was aware of the damage, they continually checked with the property management company and the restoration company regarding the situation, and kept the tenants informed as to what was going on. On December 1, 2008 the tenants advised the landlord that they would not be moving out of the suite. The landlord asked the tenants at that time and several times afterward to tell the landlord if they were not happy with the work being done. The landlord kept in touch with the tenants by email and telephone throughout December and January. The tenants emailed the landlord on January 29, 2009 and then did not hear from the tenants again until February 16, 2009, when the restoration of the floors began. The position of the landlord was that the tenants made the choice to stay in the suite during the three months in question, and the tenants could have made the landlord aware if the situation was unbearable.

In regard to the second part of the tenants' claim, regarding the tenants' expenses

incurred from February 16 to 19, 2009, the response of the landlord was as follows. The landlord did not dispute that the suite was uninhabitable for those three days. However, the tenants could have used their tenants' insurance to recover those expenses and they chose not to do so. The tenancy agreement requires the tenants to have insurance and contains an additional clause that states, in part, as follows: "8. Tenant's Insurance ... (b) ... nor shall the landlord be responsible for any loss or expense of the Tenant caused by any overflow or leakage of water from any part of the rental unit or any neighbouring strata lots, regardless of the cause...."

Analysis

When repairs are being carried out over a period of time, there may be a lowered value of the rental unit for which the tenants are entitled to compensation. When a tenant is deprived of the use and quiet enjoyment of part or all of the premises the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.

I find that in this case there was a devaluation of the rental unit and the tenants are entitled to compensation. However, I do not find that the rental unit was devalued by 40 percent, given the tenants' willingness to stay in the rental unit and the absence of any serious complaints by the tenants to the landlord during this period of time, with the exclusion of the three days when the restoration work made the unit uninhabitable. I therefore find that the tenants are entitled to compensation equivalent to 10 percent of their monthly rent, or \$120, for a period of two and a half months from November 30, 2008 to February 15, 2009, for a total of \$300. I further find that the tenants are entitled to a 100 percent rent abatement for the three days from February 16 to February 19, 2009, at a rate of \$42.86 per day, for a total of \$128.58.

In regard to the second portion of the tenants' claim, I find that the tenants are entitled to the amount claimed of \$507.50 for the expenses they incurred during the three days they were unable to inhabit the unit. A landlord may require a tenant as a term of the tenancy agreement to obtain tenant insurance that covers the cost of the tenant's

personal possessions. However, the landlord cannot require the tenants to be insured against other expenses for which the landlord may be held responsible. I therefore find that clause 8 (b) of the addendum to the tenancy agreement is contrary to the *Residential Tenancy Act* and unenforceable. Further, I accept the tenants' evidence that they would have attempted to mitigate their expenses if they had been told that the unit would be uninhabitable during the three days in question.

As their application was successful, the tenants are also entitled to recovery of the \$50 filing fee for the cost of their application.

Conclusion

I grant the tenants an order under section 67 for the balance due of \$986.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 8, 2009.