



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF, O

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$891.85, and a request of the landlord make repairs to the rental unit. The applicants are also requesting a rent reduction of \$50.00 per month to continue until all repairs are done.

Background and Evidence

The applicant testified that:

- Since August of 2008 they have been experiencing water leaks coming from the upstairs suite through the ceiling of their bathroom.
- They have made numerous requests to the landlord to try and resolve the problem but to date there is still frequently water dripping through the ceiling.
- A fire and flood restoration company hired by the landlord could not find any leaks in the plumbing but noted that there was a gap between the linoleum in the bathtub,

Residential Tenancy Branch
Ministry of Housing and Social Development

and it was felt that water overflowing from the tub may be leaking down through that area.

- He was informed that the landlord had instructed the upstairs tenants to caulk the edge of the linoleum to stop the leakage; however he does not believe that the landlord ever followed up with the upstairs tenants to ensure they comply with this request, since the problem was not resolved and the leaking has continued in varying amounts since.
- The leaking has caused damage to their personal effects and they are seeking damages in the amount of \$291.85.
- They're also convinced that there are toxic mould spores in the air that are causing serious health problems for their child.

The applicants are therefore requesting a rent reduction of \$50.00 per month, beginning August 2008 and continuing to the present. They are also requesting an order for the cost of the damaged personal property in the amount of \$291.85 and request of the respondents be ordered to pay the filing fee of \$50.00 that was paid for this hearing.

The applicants had also requested an order that the landlord be required to ensure that the leaking was repaired; however they have since decided to vacate the rental unit at the end of this month and therefore the applicant did not pursue the repair order at the hearing.

The respondent testified that:

- He does not dispute that there was a leak in August of 2008, however at that time he was informed by the fire and flood Restoration Company that the leak had not occurred in the plumbing and was likely caused by overflow from the tub in the suite above.
- He had also had a journeyman plumber come in, however he too found that the drainage pipes and water lines were not at fault and he too concluded that the water

Residential Tenancy Branch
Ministry of Housing and Social Development

was due to a crack in the floor between the right front part of the tub and the floor, through which water would drain when there was any overflow in the tub.

- The area along the edge of the tub where the water was leaking through was sealed with silicone, and overflow protectors were put on the tub.
- He believes that the problem has been resolved and although he continues to have complaints from the tenant he has never seen any water leak.
- He believes the problem may simply be condensation.

The respondent therefore believes that he has no liability in this matter as he has done everything he can reasonably think of to try and ensure that there is no further water leakage from the upper unit to the lower unit, and in fact he does not believe that the tenant has proven that there is still ongoing leaking from above.

Analysis

For the tenant to be able to claim for damages caused by the water leakage he must show that there was either negligence on the part of the landlord, or that the landlord has failed to meet his statutory obligations under the Residential Tenancy Act.

In this case it is my decision that the applicant has not shown that there was any negligence on the part of the landlord, or that the landlord failed to meet his statutory obligations under the Residential Tenancy Act.

It is my finding that the landlord has diligently attempted to resolve the issue of water leaking through the ceiling, including bringing in more than one professional. I also find the landlord has followed the recommendations of the professionals and since, as he testified, he is not a handy person himself, there is little else he could do and therefore he cannot be held liable for any damages that resulted from the alleged leaking.

Residential Tenancy Branch
Ministry of Housing and Social Development

The applicant has sent in a significant amount of photo evidence and extensive written arguments, and although it appears from the evidence presented that there is an ongoing leakage problem in the bathroom, the evidence is not conclusive.

That being said it is my decision that the applicant has shown "on the balance of probabilities" that there has been an ongoing leak. Therefore I believe it's reasonable that the tenants be allowed a reduction in rent for loss of use; however I'm not convinced that the amount they are requesting reflects the actual amount of loss.

I'm sure that an ongoing leak is very inconvenient; however throughout this, they still had the full use of the bathroom and therefore the loss of use was not extensive. I will therefore allow a rent reduction of \$30.00 per month, for the months of August 2008 through November 2009, for a total of 15 months X \$30.00 = \$450.00.

It is also my decision that the respondent must bear the \$ 50.00 cost of the filing fee paid for this hearing.

Conclusion

I have issued an order for the respondent to pay \$500.00 to the applicants.
The remainder of this claim is dismissed without leave to reapply

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: November 13, 2009.

Dispute Resolution Officer