# DECISION

**Dispute Codes** MNDC, RP, PSF, FF, O

## Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act or tenancy agreement, for an order that the Landlord make repairs and provide services and facilities required by law or agreed to and to recover the filing fee for this proceeding.

The agent for the Landlord initially sought to have the Tenants' application dismissed on the grounds that the Tenants had served their hearing package on the Landlords later than the 3 days required under s. 59(3) of the Act. The Landlords' agent admitted that the Landlords were not prejudiced by the late service of the hearing packages and did not need an adjournment in order to respond to it. In the circumstances, I find that the Landlords have waived reliance on s. 59(3) of the Act and their application to dismiss the Tenants' application is accordingly dismissed.

## Issues(s) to be Decided

1. Are repairs required?
2. Has a service or facility been terminated or restricted?
3. Are the Tenants entitled to compensation and if so, how much?

## Background and Evidence

The Tenants' Evidence:

This tenancy started in November of 2008. Rent is $1,400.00 per month. The Tenants said that on April 1, 2010, a defective part of the plumbing in the master bedroom en-suite bathroom broke causing water to leak into the master bedroom and through a wall into the dining room. The Tenants said the onsite building manager turned off the water and a restoration company also arrived later that day and shut off the hot water. The restoration company also lifted the bedroom carpet and put drier in to dry out the carpet and the bathroom.

The Tenants said later that day they also found water had seeped through the wall into the dining room so the restoration company arrived the next day to remove baseboards and place a drier under that carpeted area. The same day (April 2, 2010), a plumber attended the rental unit to restore the hot water to the rental unit (with the exception of the en-suite bathroom as a defective ball cock valve there was the source of the problem). The Tenants said that the rental unit was a mess and they were told that the fans had to be on constantly for 2 to 3 days so they stayed with relatives. The Tenants

claim that one of them returned to the rental unit on April 3, 2010 and the carpets were still wet so the dryers had to stay on until approximately April 8, 2010. The Tenants said they returned to the rental unit again on April 8, 2010 but decided to spend the weekend with relatives because the carpeting was still lifted and they wanted to allowed contractors uninterrupted access to the rental unit to expedite the repairs.

The Tenants admitted that the rental unit was completely repaired by April 27, 2010 but argued that it would have taken a lot longer had they left the repairs in the hands of the Landlords. The Tenants claimed that the Landlords were not keeping them informed about the progress of the repairs and were not consulting with the restoration company to ensure the repairs were done in a timely manner.

The Tenants said they contacted the Landlords on April 3, 2010 but did not receive a call back until after the holiday weekend on April 6, 2010. The Tenants also said they were advised by an agent of the restoration company on or about April 2, 2010 that they had not yet been contacted by the Landlords. The Tenant claimed that a plumber who fixed the defective part on April 8, 2010 advised them that the problem had only recently been reported and that he could have fixed the problem earlier had it been reported earlier. The Tenants also claimed that one of the Landlords (L.B.) admitted to them on April 7, 2010 that he had made no effort to contact the project manager for the restoration company so they provided him with the project manager's name and telephone number. One of the Tenants said this Landlord told her that he would contact the project manager for the restoration company but he expected that the repairs would take some time which contradicted the advice she was given by his agent that the repairs would be done right away.

The Tenants said they believed that if they spoke with the owner of the rental property that the repairs might go quicker. Consequently, the Tenant said she asked the Landlord for the name of the owner but he became angry, yelled at her and left. The Tenant said she later called the Landlord (L.B.) but he advised her that he would no longer deal with her and hung up. The Tenant said the Landlords' agent later contacted her spouse and asked to speak to him when she was not around.

The Tenants claimed that after the conversation with one of the Landlords (L.B.) on April 7, 2010, they asked the Landlords in writing for compensation, carpet repairs and other things but the Landlords did not respond to their request. The Tenants said they believed they were entitled to compensation because the rental unit was not fit for occupation for most of April 2010 and because they were treated badly by the Landlords when they tried to get information from them about when the repairs would be done.

The Landlords' Evidence:

The Landlords' agent claimed that repairs were done in a timely manner and that the Landlords had "ongoing contact" with all parties including the Tenants, the onsite building manager and several trades. The Landlords' agent said a plumber restored the hot water to the unit on April 2, 2010 and she inspected the rental unit on April 3, 2010

and found that the carpets were fully dried and the driers were turned off. The Landlords' agent also said she noticed a bad smell but did not investigate the source of it.

The Landlords' agent claimed that she contacted one of the Tenants on April 3, 2010 to advise her that she had been to the rental unit to check on the status of the repairs and would contact the restoration company. The Landlords' agent said she tried to explain to the Tenants that the restoration company could not make repairs until they got instructions from the developer's insurance company. The Landlords' agent also said that with the intervening holiday weekend, no one was available until April 6, 2010.

On April 7, 2010, the Landlords' agent said that she arrived at the rental property with one of the Landlords (L.B.) who went to the rental unit alone to inspect it. The Landlords' agent denied that L.B. hung up on the Tenant but instead claimed that they could not take the Tenant's calls because they were on the phone dealing with other matters. The Landlords' agent said the insurance company inspected the rental unit on April 9, 2010 and shortly thereafter authorized repairs.

The Landlords' agent argued that the Tenants did not lose the use of the rental unit for April 2010. In particular, the Landlords' agent said the carpets were dry as of April 3, 2010 and were therefore lifted for only 3 days although the restoration company did not remove the driers until April 8, 2010. The Landlords' agent claimed that with the exception of the Easter long weekend, the Tenants resided in the rental unit for the month of April 2010 and had the use of the master bedroom and one bathroom the whole time. The Landlords' agent said the master bedroom en-suite bathroom (which the Tenants said they did not use) was usable as of April 8, 2010. The Landlords' agent said that the baseboards were reinstalled on April 22, 2010 and the carpets were stretched, cleaned and put back into place on April 27, 2010.

The Landlords' agent admitted that the Tenants sent her a written demand for compensation but claimed that she advised the Tenants that they should make a claim through their Tenants' insurance. The Landlords' agent said one of the Tenants advised her that he was unwilling to make a claim and have to pay a $1,000.00 deductible. The Landlords' agent said she was unaware at that time that the Tenants had only taken out a Tenant's policy on April 12, 2010, after the flooding had already occurred.

## Analysis

The Landlords' agent sought to have the Tenants' application dismissed pursuant to s. 62(4) on the grounds that the Tenants served their application (which includes a claim for repairs) after the repairs had been completed. While it would have been advisable for the Tenants to have amended their application to remove this part of their claim, I find that their failure to do so was an irregularity which did not prejudice the Landlords and does not warrant dismissing their entire application including their compensation claim. Consequently, the Landlords' application to dismiss the Tenants' application is

itself dismissed. However, as repairs have been made to the rental unit and hot water has been restored, the Tenants' application for repairs and for an Order that the Landlords provide services and facilities are dismissed without leave to reapply.

The Landlords' agent also argued that a transcript of a telephone conversation between her and one of the Tenants on April 7, 2010 (which was submitted by the Tenants as evidence) should not be admissible because the Tenants had not provided a recording of that conversation in order to verify its accuracy. The Landlords' agent also argued that the transcript was unreliable because it only recorded her side of the conversation and not the Tenant's. Although the Landlords' agent claimed this transcript was inaccurate, I find that it probably is accurate as far as her comments were concerned as it was the same evidence given orally by the Landlords' agent at the hearing and therefore, I find that the transcript is reliable (to show what she said) and admissible.

Section 7(1) of the Act says that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 27 of the Act says (in part) that if a landlord terminates or restricts a service or facility (as defined under s. 1 of the Act), the landlord must reduce the rent in an amount equivalent to the reduction in the value of the tenancy.

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including, but not limited to, the right to exclusive possession of the rental unit and freedom from unreasonable disturbance.

Section 32 of the Act says (in part) that a landlord must 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 that make it suitable for occupation by a tenant.

The undisputed evidence of the parties was that the rental unit was damaged by flooding on the morning of April 1, 2010 due to a defective plumbing part. The Parties also agreed that the Tenants were without hot water for one day. However the Parties gave contradictory evidence about when the carpets were dried. The Tenants said they were not dried until April 8, 2010 and the Landlords claimed they were dried on April 3, 2010.

The Landlords' agent argued that her evidence as to dates of events should be preferred over the Tenants' because she kept notes on her computer of each day which she provided as evidence. The Landlords' agent admitted that she had no corroborating evidence (such as a file creation date) to verify when this information was, in fact, created. The Tenants argued that their telephone records (which were not provided as evidence) would show that the telephone conversation with the Landlords' agent about the carpets being dry occurred on April 6, 2010. Consequently, I find on a balance of probabilities that the carpets were dry after approximately 5 days. I also

make this finding having regard to the fact that the driers were not removed by the restoration company until April 8, 2010.

I also find that it was reasonable for the Tenants to reside somewhere else while the carpets in the rental unit were lifted so that they could be dried and until things could be put back in place following the insurance inspection. I also accept the Tenants' evidence that during this time furniture and other articles had to be removed from the floor and piled up as shown in their photographs. Consequently, I find that the rental unit was not fit for occupation for seven days (or until April 8, 2010) and as a result, I further find that the Tenants are entitled to a pro-rated rent reduction of **$326.67** to compensate them for those seven days.

I find on a balance of probabilities that the rental unit was fit for occupation once the carpets were dried. However, I also find that the balance of the repairs (ie. the baseboards and carpets) were not completed until April 27, 2010. The Landlords argued that the repairs were done in a reasonable amount of time given that they first had to wait for the insurer for the developer of the rental property to approve the repairs. The Tenants argued that based on their conversations with the restoration company, they believed repairs could have been done sooner had the Landlords taken the initiative to coordinate the repairs and find out what was going on.

I find that the repairs did not take an unreasonably long period of time, however, I find that this likely was due to the actions of the Tenants rather than the Landlords and their agent who admitted in her chronology (April 5, 2010) that because the Tenants had been in contact with the restoration company, they knew more about the repairs than she did. I also find based the Landlords' agent's chronology, that the Landlords made no inquiries regarding the repairs from April 7, 2010 until April 12, 2010 when their agent said she spoke to the Tenants and the onsite building manager of the rental property. The Landlords' agent also claimed that after that day, she left 2 messages for the developer of the rental property when the Tenants reported that no repairs had been made.

Given that the repairs were made in a timely manner, I cannot conclude that the Tenants are also entitled to compensation for a breach of their right to quiet enjoyment or due to the Landlords' failure to make repairs. In particular, I do not find that the Tenants were unreasonably disturbed by having to wait 3 weeks for the baseboards and carpeting to be reinstalled (after they had been dried).

The Landlords' agent argued that the Tenants did not mitigate their damages because they did not, for example, clean up drywall debris on the floor from the removal of the baseboards. The Tenants argued that they were not supposed to touch anything until the insurance company inspected the renal unit on April 9, 2010. In the circumstances, I find that there is no merit to the Landlords' argument and based on the foregoing findings, I find that the Tenants have more than mitigated their damages in this matter by ensuring the repairs were done in an expedited fashion.

Furthermore, the Landlords did not provide a copy of the tenancy agreement which they claimed included a term requiring the Tenants to obtain insurance to cover loss of use of the rental unit. In the absence of such evidence, I also cannot conclude that the Tenants have failed to mitigate their damages for this reason.

Consequently, I find pursuant to s. 72 of the Act that the Tenants may recover from the Landlords the $50.00 filing fee for this proceeding. **I order pursuant to s. 65(1) of the Act that the Tenants may deduct their monetary award of $376.67 from their next rent payment when it is due and payable.**

## Conclusion

The Tenants' application for compensation is granted in part. The Tenants' application for a repair order and that the Landlords provide services and facilities 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: May 19, 2010.

Dispute Resolution Officer