



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, RP, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for an order requiring the Landlord to make repairs, for a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application for an order requiring the Landlord to make repairs.

The Tenant stated that his name is entered incorrectly on his Application for Dispute Resolution. The Application for Dispute Resolution has been amended to show the Tenant's proper name.

At the hearing the Tenant asked to amend the amount of his monetary claim from \$201.30 which represents compensation for a breach of the quiet enjoyment of the rental unit for six days to \$369.05, which represents compensation for a breach of the quiet enjoyment of the rental unit for eleven days. The Tenant stated that his failure to amend the Application for Dispute Resolution prior to the hearing was an "oversight".

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that an applicant may amend an application without consent if the dispute resolution proceeding has not yet commenced and that the applicant must serve the respondent with an amended copy of the Application for Dispute Resolution at least seven days before the scheduled date of the hearing. Given that the Tenant had no legitimate reason for not complying with section 2.5 of the Residential Tenancy Branch Rules of Procedure, I declined his request to increase the amount of his monetary claim. In reaching this decision I determined that the amendment would place the Landlord at a disadvantage, given that they did not have advance knowledge of the Tenant's desire to claim compensation for additional days.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary Order for the loss of the quiet enjoyment of his rental unit and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that the Tenant took possession of this rental unit on September 01, 2009 and that he is currently required to pay monthly rent of \$1,040.00.

The Landlord and the Tenant agree that water leaked into the rental unit through the light fixture in the Tenant's dining room on August 07, 2010 and that the Landlord was informed of the incident in a timely manner.

The female Agent for the Landlord stated that a plumber inspected the unit on August 07, 2010 and determined that the water was leaking from the roof; that the Landlord contacted the company who had replaced the roof in May of 2010 and was advised that they would not respond until August 09, 2010; that the male Agent for the Landlord swept water from the roof in an attempt to temporarily resolve the problem; that they understood that water had stopped leaking into the rental unit by 10:00 a.m. on August 08, 2010; that upcoming weather predictions at that time were for a period of dry weather; that there was minimal rain on August 09, 2010; that it did not rain between August 10 and August 17 of 2010; and that the roofing company did not repair the roof until August 17, 2010 for reasons beyond the control of the Landlord. The female Agent for the Landlord stated that the Landlord did not hire an alternate roofing company, in part, because of the weather forecast and, in part, because they had a warranty on the roof which had just been replaced.

The Tenant stated that they placed two buckets on their dining room table and that they collected approximately three to four gallons of water on August 07, 2010 and August 08, 2010; and that they turned off the breaker that supplied power to the dining room light for safety reasons. He stated that the water began leaking at approximately 12:30 p.m. on August 07, 2010 and stopped at approximately 10:00 a.m. on August 08, 2010. He stated they were initially informed that the roof would be repaired on August 09, 2010; that they were subsequently told the roof would be repaired on August 10, 2010; and that they were not told that the roof had been repaired until August 29, 2010.

The Tenants stated that endured the inconvenience of the buckets and the power loss until August 28, 2010 as they had not been informed of the repairs. He acknowledged that the weather was dry for the majority of this time but he argued that weather reports are unreliable so he could not remove the buckets or restore power to the affected breaker.

The female Agent for the Landlord argued that the rental unit was impacted for approximately twenty-four hours; that water egress was relatively minor; that no damage was reported to the unit or the Tenant's property and that the Landlord took reasonable steps to mitigate the inconvenience to the Tenants.

The Tenant based his claim for compensation on a per diem rental rate of \$33.55. The Landlord and the Tenant agree that the leak impacted the dining room, which is approximately 825 square feet. The Landlord and the Tenant agree that the rental unit is approximately 1000 square feet in size.

Analysis

Every tenancy agreement contains an implied covenant of quiet enjoyment. Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. Temporary discomfort or inconvenience does not generally constitute a basis for a breach of the covenant of quiet enjoyment.

While a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant when making repairs or completing renovations, it is always necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In these circumstances, I find that a relatively minor leak in the dining room ceiling interfered with the Tenant's ability to use less than 10% of his rental unit for a period of approximately twenty-six hours. Given that the Tenant acknowledged that the ceiling did not leak after 10:00 on August 09, 2010 and that the dry weather was predicted, I find that the Tenants' decision to discontinue using the dining room until he was told the roof had been repaired was unreasonable.

I find that the Landlord acted reasonably when it did not call an alternate roofing company after learning that the company that had replaced the roof in May of 2010 would not respond until August 09, 2010. In reaching the conclusion that the Landlord acted reasonably in not calling an alternate company, I was influenced by the fact that the Landlord reduced the amount of water on the roof in an attempt to minimize leakage and that water had stopped leaking by the morning of August 08, 2010.

I find that the Landlord acted reasonably when it did not call an alternate roofing company after learning that the company that had replaced the roof in May of 2010 would not respond on August 09, 2010. In reaching the conclusion that the Landlord acted reasonably in not calling an alternate company, I was influenced by the fact that

the leak had stopped, dry weather had been forecasted, and it would have been significantly more expensive to hire an alternate company.

Although I recognize that even a minor leak is an inconvenience for tenants, I find that the inconvenience in these circumstances was so minor and lasted such a relatively short period of time that financial compensation is not warranted.

Conclusion

I find that the Tenant's application has been without merit and I dismiss his application to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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: September 29, 2010.

Dispute Resolution Officer