



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, RR

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act; Orders that the landlord comply with the Act, that the landlord make repairs and emergency repairs and to allow the tenant to reduce rent owed for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The landlord confirmed receipt of the tenant's evidence; the landlord did not submit any evidence.

Preliminary Matters

This hearing was originally scheduled to be heard on September 22, 2010, at which time both parties attended. The hearing had been inadvertently cancelled and was rescheduled to be heard today.

Since filing this Application the tenant has submitted an Application to cancel a Notice ending tenancy for unpaid rent; that hearing is scheduled to be heard on October 20; the landlord acknowledged he was aware of that upcoming hearing. Discussion in relation to the October 20 hearing occurred; however the parties were not able to come to a settled agreement.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$1,450.00 for damage or loss under the Act?

Must the landlord be Ordered to comply with the Act?

May the tenant reduce rent payments?

Background and Evidence

The tenancy commenced on August 15, 2010; rent is \$775.00 per month, due on the first day of each month. A deposit in the sum of \$375.00 was paid prior to the tenant moving into the unit. A move-in condition inspection was not completed. Payment of rent owed is under dispute.

The tenant is making the following claim:

Damage to bed	400.00
Doctor's visits & medication	50.00
Cost of son living away from home due to risks	300.00
Emotional damages	500.00
	1,450.00

The tenant supplied the following evidence submissions:

- one hundred and two photographs taken of the rental unit between August 24 and September 18, 2010;
- a September 13, 2010, Healthy Homes – Indoor Air Quality Inspection Services report, signed by a Health and Safety Consultant;
- a hand-written note given to the tenant by the landlord on September 12, 2010;
- diary records kept by the tenant between August 31 and September 7, 2010; and
- a note given to the landlord dated August 30, 2010, requesting rent abatement due to loss of use of part of the unit.

The tenant viewed the unit prior to move-in and found it to be suitable. The unit has mainly tiled flooring with a storage area that has a cement floor.

On August 24, 2010, the tenant discovered water seeping into the bedroom, from under her bed. The tenant immediately moved her bed and called the landlord, who came to the unit and wiped up some water; no other assistance was offered. Within several days the landlord did patch the bedroom floor.

The photographs taken between August 24 and September 19, 2010, show flooring that is wet, water flowing under walls and into the living room area, water coming under walls where electrical outlet and wires are running, piles of the tenant's belongings and boxes that are wet, tile floor that is wet and areas of tile grouting that are wet. Photographs also show the eaves trough from the roof, gaps around the entrance door, damage to the tenant's son's bedroom ceiling and open egress from the outside of the basement through a hole, into the home.

The tenant stated that the landlord had attempted to complete repairs on 2 occasions; once on August 24 and on one other occasion prior to September 12, 2010. By August 31, 2010, the water seepage in the bedroom was again evident and water was also leaking into the basement suite from a leak upstairs.

The tenant attempted to contact the landlord to make repairs, but when she called the landlord he would yell at her. On September 12, the landlord gave the tenant a hand-written note that stated:

"we apesate for you. We try to fix flood in the bedroom. But we have no time now, we need time finish Apple first and after fix this problem. If you want to stay heare please pay rent (illegible) \$600.00 befre 15th Sep."

[Reproduced as written]

During the hearing the landlord confirmed he was busy harvesting fruit and did not have time to spend completing repairs at the rental unit.

On September 13, 2010, the Health and Safety Consultant inspected the rental unit and issued a written opinion which stated, in part:

"you may be living in an unhealthy to significantly unhealthy environment...the space has active moisture/water intrusion. Staining at the base of walls and doors frames indicates a repetition of moisture intrusion over time. Water was found to be ponding on the tile floor in the kitchen area. Blacking staining at base of walls is suspect. The relative humidity of the space while on site was 56-59%, while outside was 34%...the potential for this environment to be health harmful is high."

The report recommended further testing and assessment of the rental unit.

On September 7, 2010, the tenant attempted to reach an agreement with the landlord in relation to rent abatement. The landlord considered the suggestion and offered the tenant \$50.00 rent reduction or an eviction would be issued. On September 8, 2010, the landlord attended at the property requesting payment of the rent owed, as he believed he had fixed the problems with the unit.

The tenant submitted photographs taken on September 19, 2010. She awoke that morning to discover a significant flood in her unit. The tenant called the landlord, who yelled at the tenant and told her to get out of the unit. The tenant was concerned as her son had friends over for a sleepover; so she called the police, who then dispatched the fire department. The police attended at the rental unit, and when the landlord did arrive the police ordered the landlord to give the tenant a shop vacumn.

The landlord brought the tenant the vacumn; the tenant spent 8 hours cleaning the unit. The landlord stated he offered to vacumn, but the tenant would not let him; the tenant denied this.

Three days later the landlord retrieved the vacumn, leaving the tenant to mop up water that continued to seep into the unit. The tenant stated that the water is seeping into the unit from the ground and that the upstairs tenants have a washing machine that empties into the yard.

The tenant's personal papers have been damaged by the water and her oven does not work. The tenant is afraid to use the baseboard heaters, due to the constant moisture and wet floors.

The tenant is claiming compensation for damage to her bed, as it was on the floor when the flooding began. A photograph taken on August 24 clearly shows damage to the mattress.

The tenant has had her son stay with his father, who is now requesting compensation. The tenant is not overly concerned about the medical costs she has incurred, as she has experienced costs only to increase medication she takes for anxiety, due to the additional stress caused by problems with the flooding.

The tenant is claiming damages as the result of the stress and loss of quiet enjoyment of her unit. The tenant cannot communicate with the landlord without him yelling at her and she often cries, as she feels powerless to change the situation. The landlord has told her it is her dog urinating on the floor that is causing the problem; the tenant has had to leave the unit for extended periods of time in order to manage the stress.

When asked what the state of the rental unit is today the tenant responded that water is leaking in under the stairs, from the walls and under multiple areas of the floor tiles. The tenant believes the rate of water entry to the unit has been increasing.

The landlord responded that up until September there was only a small amount of water leaking into the unit, that he had offered the tenant a heater and fan, but she declined.

On September 19 the landlord had offered to help the tenant clean up the water, but the tenant refused.

The landlord's witness testified that on approximately August 24 he helped to patch the bedroom floor and that in the kitchen there has been water under one tile and that problem was fixed. The tenant's bed was on 2X4's and was not damaged and the water drain outside was repaired. The witness assisted the landlord with repairs on one other occasion, but could not recall the date.

The landlord is upset as the tenant refused to pay September rent and wants the tenant to move out. The landlord has issued the tenant a 10 Day Notice ending tenancy for unpaid rent; a hearing requested by the tenant is scheduled for October 20, 2010. The landlord offered no evidence of any attempt to investigate the problem of water seepage and floods and stated that the problem has been addressed.

Analysis

I find, based upon the September 13, 2010, air quality report, the photographic evidence and the testimony of the tenant that the constant water seepage and floods into the rental unit have been of an urgent nature.

Section 33(1) of the Act defines emergency repairs as:

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) **necessary for the health or safety of anyone or for the preservation or use of residential property**, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(Emphasis added)

I found the tenant's testimony balanced, reasonable and credible. The landlord failed to acknowledge the seriousness of the water seepage and floods, accused the tenant of refusing to cooperate, and offered no reasonable explanation for his failure to respond or have someone else respond to the repairs that must be made. In his written note of September 12, 2010, the landlord acknowledged the water seepage but refused to arrange for repair as he was busy harvesting fruit. The landlord's witness offered no convincing evidence of repairs made.

I found the testimony of the landlord and his witness of little value, as, even if the repairs were made that they detailed, they have not had any significant impact on the continued flooding in the rental unit; evidenced by the photographs taken between August 24 and September 19, 2010. The landlord did not dispute the events of September 19, in that the police had to tell the landlord to provide a suction vacuum so that the water could be removed. Even that event has failed to motivate the landlord to investigate the cause of the water entering the unit.

The tenant acknowledged the several efforts the landlord had made, by patching the bedroom floor and fixing a drain pipe, which I find demonstrated the tenant's demeanour as non-adversarial and reasoned in the face of the landlord's refusal to acknowledge the serious nature of the continued seepage, flooding and resulting loss of value of the tenancy.

Section 32(1) of the Act provides:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find, on the balance of probabilities that the landlord has failed to maintain the rental unit to a standard required by the Act. The landlord did not supply any evidence of work completed, other than the testimony of his witness who the tenant acknowledged, had been at the unit to patch the bedroom floor and clear an exterior water pipe. There is no evidence before me that the landlord took any steps to address what appears to be a serious breach of the building envelope, allowing water to constantly seep into the basement unit and, at times, to flood the unit; combined with high levels of humidity in the unit relative to the levels outside.

In the absence of any evidence by the landlord that he has taken the need for repair seriously by fully investigating the cause of the water egress, I find that the landlord has failed to maintain the rental unit in a state that makes the unit reasonably suitable for occupation. I base this decision on the evidence before me, and in particular the note written by the landlord on September 12, 2010, in which he told the tenant he was too busy to make the necessary repairs to the rental unit. The failure to repair resulted in further flooding on September 19, 2010. I have also considered the air quality report submitted by the tenant, which confirmed the tenant's testimony.

Therefore, I find that the tenant is entitled to monthly rent abatement in the sum of \$575.00, effective September 1, 2010. I find that the rental unit has been so neglected by the landlord that the value of the tenancy has been reduced to that of barely a

storage locker. The tenant's belongings have been subjected to flooding, she has a fear of using electrical appliances, the oven does not work and water egress has continued.

I find that rent abatement in the sum of \$575.00 per month (\$18.90 daily) will continue until such time as:

1. The landlord investigates the cause of the on-going seepage and floods;
2. The landlord completes the required repairs, including the oven; and
3. The landlord provides the tenant with a written report by a professional tradesperson, outlining the assessment of the problem and detailing the repairs that have been completed in relation to the flooding and oven and the date repairs were finalized.

Once written notice of repair completion is provided to the tenant the tenant will cease the rent abatement. If there is disagreement between the parties in relation to the repairs made, the landlord must submit an Application and provide evidence of the repairs made, at which point a dispute resolution officer will decide if and when the abatement should cease. If the tenant has continued the rent abatement beyond the date that repairs were effectively completed, the dispute resolution officer may determine that portion of the abatement as unpaid rent.

The landlord will provide the tenant with Notice of entry, as required by section 29 of the Act, when entry for assessment and repair is required. The parties may also enter into a mutual agreement for entry to the unit.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

In relation to the claim for compensation made by the tenant, I find, in the absence of any verification of the losses claimed, on the balance of probabilities that he tenant is entitled to the following:

	Claimed	Allowed
Cost of leaving home due to health(gas)	200.00	0
Doctor's visits & medication	50.00	0
Cost of son living away from home due to risks	300.00	0
Emotional damages	500.00	500.00
	1,450.00	520.00

I considered the claim for emotional damages in the context of a loss of quiet enjoyment. I have found that the landlord has failed to meet his obligation under the Act; due to the failure to maintain the unit in a reasonable, consistently habitable state. The tenant has been able to remain in the unit; however her use and enjoyment of the unit has been negatively impacted.

The tenant has had to constantly clean water up from the floors, had to call the police for assistance during the September 19, 2010, flood and has had personal belongings water damaged. Her son has gone to live with his father and the tenant's pre-existing medical condition has been exacerbated; all reportedly due to the loss of value and enjoyment of her home. I have not placed weight on the tenant's claim in relation to her health problems, but have found based on the evidence before me, that the state of the rental unit has been allowed to remain in a state of disrepair, due to the negligence of the landlord.

Therefore, based upon the totality of the evidence before me and the balance of probabilities, I find that the tenant is entitled to damages, as the result of the loss of quiet enjoyment of the rental unit from August 24, 2010, to this date, in the sum of \$500.00.

I have issued the tenant a monetary Order in the sum of \$1,670.00, consisting of:

- September and October, 2010, rent abatement in the sum of \$575.00 per month (\$1,150.00,)
- damage to the mattress (\$20.00); and
- loss of quiet enjoyment (\$500.00.)

The monetary Order will be adjusted in value, depending upon rent paid and the date the tenancy ends. For example; the Order includes rent abatement for September and October; therefore, if the tenant has not paid any amount of September or October rent owed, the value of the monetary Order will be decreased by \$575.00 for each of those months plus an additional deduction of \$200.00 per month rent owed.

If the tenant moves out of the rental unit at the end of October, 2010, and does not pay any of the rent owed for September and October, the balance of the Order remaining owed to the tenant would be \$120.00.

The parties should keep records of any amounts that will be deducted from the monetary Order, should the tenant eventually enforce the Order through Small Claims Court.

The balance of the tenant's monetary claim is dismissed.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,670.00, which is comprised of rent abatement and damages.

The rent abatement will continue as Ordered in the sum of \$575.00 per month, until such time as the landlord complies with my repair Order made and reaches an agreement with the tenant or he obtains an Order ceasing the rent abatement.

The tenant's claim for damages beyond loss of quiet enjoyment and mattress damage is dismissed.

Based on these determinations I grant the tenant a monetary Order for the balance of \$1,670.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 4, 2010.

Dispute Resolution Officer