



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to Order the Landlord to make emergency repairs for health or safety reasons.

Service of the hearing documents, by the Tenant to the Agent, was done in accordance with section 89 of the Act, sent via registered mail on January 10, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Agent confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord or his Agent breach the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof for a monetary claim as a result of that breach?
3. Are emergency repairs required for health or safety reasons?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective November 1, 2010. Rent is payable on the first of each month in the amount of \$400.00 and the Tenant paid a security deposit of \$200.0 on October 16, 2010. The Tenant was permitted to occupy the unit a few days early on approximately October 28, 2010 and the Tenant has dealt directly with the Landlord's Agent to arrange the tenancy and any issues that have arose.

The Tenant testified this is an old house consisting of a main floor and upper floor. She rents the main floor area and there are other tenants on the upper floor in a separate suite. On approximately October 30, 2010, her second day in the rental unit, she saw water coming outside under her entrance door when she returned home. She went inside and could not see where the water was coming from. She looked around and then opened a closet which housed two hot water tanks and saw there was several inches of water underneath the hot water tanks going under the floor. She then saw rust on the hot water tanks and the wood at the bottom of the door was rotten. She stated the unit was empty for about three months or so prior to her occupancy.

The Tenant called the Agent immediately to inform him of the presence of water and requested that it be repaired. She waited two days and when she did not hear back from the Agent she went out and called him again. She does not have a telephone so she had to go to a coffee shop or public phone to call him. The Agent told her during the second conversation that he had informed the Landlord but has not heard back. He stated he would call the Landlord again. She continued to call the Agent on a regular basis and then he or his office staff began to recognize her telephone number and would not answer the phone.

Finally by the end of November a man came through the unit and told her he was the owner of the house and was there to fix the water problem. He told her a plumber would be there in the next two days to repair it but no one came so she called the Agent again. At this point she stated that more water was collecting and it began to smell worse in her unit. She could not use the heater in her kitchen because when the heat came on it would increase the musty mouldy smell. Approximately every other day she began to see more floods and the smell would "come more".

She began to call the Agent from different telephones in an attempt to have him answer the phone and take action to make the repairs. Then a couple days before Christmas two men came to work on the problem but they did not fix it and left. So she made another attempt to contact the Agent and when that failed she made application at the Residential Tenancy Branch on December 30, 2010. After the Agent received the hearing documents he sent plumbers with a camera to find the problem. Repair work was not started until January 27, 2011 and was completed on January 30, 2011; only after she filed her application for dispute resolution. She is seeking an amount of \$785.00 to compensate her for the 4 months of having to put up with the stress of trying to get the problem fixed, putting up with the smell of the water and the cold from not being able to use the heater.

The Owner testified and confirmed that he was notified of the water issue. He wanted to clarify that at no time was the Tenant restricted from using the rental unit because the unit was built on a subfloor above the concrete floor. The water was pooled under the sub floor so there was no water above the flooring in the rental unit. He advised that it was a very difficult problem to diagnose. They had hired plumbers who initially thought the problem was with the blow off valves releasing on the hot water tanks, then they thought it had to do with the pressure relief valve that controlled the water coming into the hot water tanks. They replaced the pressure relief valve and placed buckets on the blow off valves on the hot water tanks. Then they realized the water was not coming from the hot water tanks.

The Owner confirmed there was a delay over the Christmas break and argued they had planned to attend to the issue in the New Year. He states their action to repair the problem was not in response to the Tenant's application for dispute resolution. His partner attended two weeks ago to trouble shoot the problems and determined the cause of the problem was a partially plugged floor drain that was in the concrete under the subfloor. They arranged for the Tenant to stay in a hotel for two nights while his partner removed the floor and repaired the drain problem. He wanted to emphasize that the water was under the Tenant's floor not on the floor so she was not prevented from using the full suite. He stated that he did not understand why she could not use the heater as there was no water anywhere near it. He confirmed they found some mold under the floor and under the doorway. He stated that while they could have sent more people to diagnose the issue it was not a perfect situation because they could not figure out the cause of the problem. It was complicated by the fact that the Tenant does not have a telephone so they were not able to contact her.

The Agent testified that the Tenant's time line is accurate. They did not submit evidence in response to the Tenant's claim because her evidence was accurate and they felt this was not a serious issue because the rental unit was still usable. He confirmed the Tenant's first complaint was received October 28, 2010. The only place they could see water was in the closet and under the door and only during times of heavy water use in the house. The unit was in "good living condition" so the Tenant was not affected. There was only a bit of standing water in the unit under the floor.

The Owner provided dates of when either his partner or a plumber attended. His partner first attended November 19, 2010 and returned December 14, 2010 to replace the relief valve and told the Tenant he would be back. The second plumber came later and knew it was the floor drain causing the problem. Then his partner attended and trouble shot the problem about two weeks ago.

The Tenant stated that the underneath side of the floor was all wet, mouldy, and smelly. Within two hours of serving the Agent with the notice of hearing she was advised by the Agent that a plumber would be coming the next day. For an entire month the Agent or his office would not pick up the phone when she called which made the situation very stressful. She feels this problem should have been fixed the first time she called. A landlord should not wait for a tenant to show them of continued problems and wait until it becomes very smelly to make any repairs.

The Owner stated that by all the reports the unit remained in liveable condition. Yes there was water and mold under the floor but it was a difficult problem to resolve. It was his partner that determined the problem about two weeks ago when he went to trouble shoot the situation.

The Agent confirmed that he does not always answer his phone if he is in meetings or away from his phone. He stated that part of the problem is that the Tenant does not leave messages when she calls.

The Tenant argued that at first she left messages but they were never returned so she felt she would not bother leaving more. At one point when she called to complain the Agent told her that the problem would not be fixed so she should move. She confirmed the repairs were completed on Sunday January 30, 2011.

In closing the Owner confirmed he did have a conversation with the Agent about the possibility of having the Tenant move so they could have vacant possession to repair the problem.

Analysis

I have carefully considered the testimony and evidence provided by the Tenant which included, among other things, a typed statement dated December 30, 2010, and photographs of the rental unit.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Landlord or his Agent.

Section 32 of the *Act* provides that 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.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the Tenant's evidence and testimony that she took all reasonable steps to ensure the Landlord's Agent was made aware of the problem. I also accept that given the timelines that were testified to by the Owner to diagnose the problem and the Agent's delays in responding to the Tenant's telephone calls, the Tenant's concerns were not acted upon in a timely fashion which caused the Tenant to suffer a loss of her quiet enjoyment.

Policy Guideline 6 states: in determining the amount by which the value of the tenancy has been reduced, the Dispute Resolution Officer should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

As such, I make note that while the Tenant had use of the entire floor space of the rental unit during this time she was faced with a foul odour each time she turned on the kitchen heat. Subsequently she did not use the heat to reduce the presence of the odour which left the kitchen cooler than desired.

Conclusion

The repair has been completed as of January 30, 2011; therefore the Tenant's request for emergency repairs is now moot.

For the reasons noted above, I find the Tenant is entitled to monetary compensation of **\$240.00**, pursuant to Section 67 for the loss of quiet enjoyment. The total amount is comprised of \$80.00 per month for the three months (November, December, and January) of her general loss of quiet enjoyment.

The Tenant may deduct the one time amount of \$240.00 from her March 1, 2011 rent payment as full compensation for this award.

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: February 04, 2011.

Residential Tenancy Branch