



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes RP, RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution for an order to have the Landlord complete repairs and for a rent reduction and to recover the filing fee.

The Tenant and a witness and the Landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. After testimony began, Landlord SM left the hearing and Landlord GM continued with testimony.

On a procedural note, evidence submitted by the Landlord in late January indicated that a Notice to End Tenancy had been issued to the Tenant; however the effective move out date of the Notice was on a date after the hearing. I advised the parties that this matter was not at issue at the hearing and was not considered.

Issue(s) to be Decided

Is the Tenant entitled to the relief sought in his Application?

Background and Evidence

This tenancy began on August 1, 2010, on a month to month basis, monthly rent is \$1,800.00 and a security deposit of \$900.00 was paid on August 1, 2010.

The Tenant submitted into evidence the following documents:

- A copy of an Agreement between the Landlords, the Tenant and a painting and renovation company, dated January 14, 2011; and
- A document entitled Scope of Work purportedly for work to be done in the rental unit;

The Landlord has submitted the following **relevant** documents:

- The tenancy agreement and addendum;
- A Timeline and Events; and
- An Interim Proof of Loss from the Landlords' insurance company

The Tenant's claim for an order requiring the Landlords to make repairs to the rental unit and for an order reducing the rent also alleges that the Tenant has suffered a loss of quiet enjoyment of the rental unit.

In support of his application, the Tenant's relevant testimony indicated the rental unit was a whole house and that he, the Tenant, sublet the basement unit to his son for \$900.00 per month. The Tenant testified that the basement experienced a flood on September 19, 2010, and that he immediately notified the Landlords, who attended with a wet vac.

The source of the flood, according to the Tenant was an overloaded city sewer system.

I heard testimony from the Tenant that on October 5, 2010, he advised the Landlord that there was remaining water in the basement unit, water under the flooring and drywall damage. The Tenant testified that the Landlords did not attend the property until October 23, 2010. According to the Tenant, the Landlords advised that due to the extent of the flooding, they would have to contact their insurance company before any repairs could be started.

I heard testimony from the Tenant that the Landlord informed him the basement unit would have to be vacated and belongings removed in order to have the flooring and repairs completed. The Tenant testified that since October 26, 2010, through the date of the hearing, the basement suite has been vacant and that he has lost rent of \$900.00 per month.

I heard testimony from the Tenant that the Landlords were exploring different options of repairing the rental unit when a company run by his son submitted a proposal to complete the work, which was later accepted by the Landlords, with the proviso that work not begin until the Landlords had received a payout from the insurance company.

I heard testimony from the Tenant that an agreement was negotiated between the Landlords and the Tenant's son's company which suspended the Tenant's December rent payment providing the agreement and all contents of the agreement are "executed accordingly." I heard further testimony from the Tenant that work began on earlier than the date of January 14, 2010 listed in the agreement and that the agreed upon terms had been executed in full; however according to the Tenant the Landlords have not paid the balance of the agreement and are now attempting to collect the full rent from December and January through a 10 Day Notice to End Tenancy for Unpaid Rent.

I heard testimony and reviewed evidence from the Landlord which indicated that the Landlords did attend the property on October 23, 2010, pulled up the floor, and after assessment, contacted a flooring specialist. The specialist advised that the flooring could not be salvaged or saved, so the Landlords began the process of contacting their insurance company and gathering estimates.

I heard testimony and reviewed evidence from the Landlord that their insurance company advised that they would cover lost rent of \$800.00 for one month, that the work would be covered only if the basement was vacant and that they could start the repair by mid November. I heard testimony and reviewed evidence from the Landlord that during this process, they were approached by the Tenant and his son about doing the repair.

I heard testimony from the Landlord that they were never advised that the basement suite was vacant and that when attending the rental unit, viewed items still in the basement suit.

I heard testimony from the Landlord that the work listed in the agreement was never fully completed by the Tenant's son's company as specified and therefore the Tenant still owed full rent for December and January.

Upon my query, the Landlord stated that to his knowledge work has not been completed as of the day of the hearing.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

The Landlords have submitted evidence and testified to issues, such as a failed contract for services with the Tenant's son's company, a Notice to End Tenancy and unpaid utility bills, which are not relevant to the Tenant's claim for a rent reduction and an order requiring the Landlords to make repairs to the rental unit. I find the Landlords are at liberty to pursue these separate issues in dispute resolution or through other legal remedy, but the issues were not considered in this Decision.

The Landlords are required under section 32 of the Residential Tenancy Act to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation. I find that the testimony, evidence and the Landlord's confirmation supports that the basement suite flooring has been in need of replacing since at least October 23, 2010, through the day of the hearing.

I find the Landlords have not taken sufficient action necessary to remedy the damaged floor and I find this insufficient response has caused the Tenant to suffer a loss of use and enjoyment of his rental unit. I do not find the Tenant submitted proof that he was paid \$900.00 per month; however I accept that the lack of flooring in the basement suite has diminished the value of the tenancy by \$800.00 per month as allowed by the Landlord's insurance company. I **award** the Tenant compensation of **\$800.00** per

month for loss of enjoyment of the rental unit starting October 26, 2010, through the day of the hearing, in the amount of **\$3,555.07** (\$355.07 for October 26-31 and \$3,200.00 for November 2010, through February 2011).

I also award the filing fee paid for this application to the Tenant and I provide the Tenant with a Monetary Order for the total amount of **\$3,605.07**, to serve upon the Landlord should the tenancy end.

In the alternative, should the tenancy continue, I **direct** under section 67 of the Act the Tenant satisfy the monetary claim of \$3,555.07 by withholding rent of \$1,800.00 for March 2011, \$1,800.00 for April 2011, and \$5.07 in May 2011.

Should the Landlord fail to replace the basement suite flooring by May 2011, I further authorize the Tenant to reduce future monthly rent payable by \$800.00 until such time the basement suite flooring is replaced. Upon completion of the basement suite flooring replacement, the Tenant will be obligated to resume payment of the full monthly rent starting the month following the flooring replacement. Example: if the Landlord finishes the flooring replacement May 2, 2011 the Tenant's rent for May 2011 is reduced by \$800.00 but the Tenant would have to pay the full amount of rent payable for June 2011.

Conclusion

The Tenant was successful with this application and has been provided a Monetary Order in the amount of **\$3,605.07** for the loss of use and enjoyment of the rental since October 23, 2010 through the day of the hearing.

The Tenant is authorized to satisfy the monetary order by withholding rent in March, April and May as directed above and by reducing future monthly rent by \$800.00 until such time the landlord replaces the basement suite flooring.

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 03, 2011.

Residential Tenancy Branch