



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Tenant's application for dispute resolution, seeking a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement and to recover the filing fee. Both parties sought monetary orders.

The Tenant, the Tenant's witness, the Landlord and the Landlord's witness 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.

On a procedural note, after being affirmed into the hearing, I requested that the two witnesses leave the hearing and remain out of earshot until it was time for their testimony. When time, I asked the Landlord to call his witness, at which time the witness responded upon hearing her name. When asked why she had not left the conference, the witness stated that she had placed the phone down. As the witness was clearly listening into the conference, I considered her statement to lack credibility and therefore her testimony to lack credibility. Therefore, I have not considered her testimony in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

Background and Evidence

I heard testimony that this month to month tenancy started on January 15, 2008, current monthly rent is \$830.00, and a security deposit of \$357.50 was paid by the Tenant on January 9, 2008.

The Tenant's claim is as follows:

Loss of use of the rental unit for a portion of February	\$622.44
Filing fee	\$50.00
TOTAL	\$752.28

The Tenant's relevant evidence included a statement from her insurance company's restoration company, a written chronology of events surrounding her claim, a copy of a letter, dated February 11, 2011, addressed to the Landlord concerning repairs to the rental unit and request for compensation, a cable invoice, a letter from the Tenant's insurance company explaining coverage of her claim, hotel invoices reflecting occupancy dates from February 7 to February 25, 2011, a work authorization from the restoration company and photos of the rental unit.

The Tenant provided through her testimony and evidence that on February 2, 2011, she noticed that her basement rental unit had no hot water, which she attributed to heavy use by the upper tenants. The Tenant submits that she then informed the Landlord on February 4 of the lack of hot water, but did not hear from him until February 7, 2011. The Tenant stated that it wasn't until February 9 the Landlord brought an electrician in to assess the problem.

The Tenant stated that on February 9, she came home to find that the kitchen flooring and sink had been removed by jackhammer, that the hot water tap was removed and that there were two holes in the wall. The Tenant then submitted that the Landlord requested that all contents be removed to the living room, which left just the bedroom as usable space.

The Tenant submitted that her insurance adjuster arrived and determined that the rental unit was uninhabitable due to having no kitchen, no use of living room, exposed pipes and the amount of concrete dust stirred up.

The Tenant stated and submitted evidence that the insurance company reimbursed the Tenant's hotel expense from February 7 until February 25, 2011 and is claiming for loss of use resulting in loss of quiet enjoyment of the rental unit, as well as the portion of the month she was unable to use her cable.

The Landlord's relevant evidence included a timeline of events, the tenancy agreement, a letter from the Tenant, an invoice from a plumbing company, an invoice from a plumbing and drain service, an invoice from a paint contracting company and a cheque in the amount of \$200.00 payable to the Tenant.

In response, the Landlord submitted that he was unaware of the hot water issue being a problem other than a possible breaker malfunction until February 7, when the upper tenants called.

The Landlord stated that the earliest he could arrange for a plumber was February 8, 2011.

The Landlord acknowledged that a repair was necessary, but that he attended to the repair as soon as he was informed of it and that work began almost immediately, on February 9.

The Landlord submitted that at the end of each work day following repairs, he cleaned, tidied and swept the rental unit, and had the Tenant's belongings covered in 3 mil poly sheets so that nothing landed on the Tenant's possessions.

The Landlord discussed that he had ongoing issues and disagreements with the Tenant's partner about the course of repairs, and tried to explain to him that the Tenant was the one he would deal with.

The Landlord submitted that the rental unit was ready by February 13, 2011, for the Tenant to return, and that only minor repairs, including dry walling, painting and installing a transition strip, were left to be completed. The Landlord contended that the Tenant could return because everything was covered by the 3 mil poly sheets and the dust could not penetrate this material, but that the Tenant stayed away at her choosing.

The Landlord, in recognition of the inconvenience of the repair work, submitted that he paid the Tenant \$200.00 in rental rebate.

The Tenant responded by submitting that the rental unit was not ready until February 25, as the 3 mil poly sheet covering her possessions continued to have concrete dust, indicating it was not safe, and due to the fact she had no use of the living room. More importantly, according to the Tenant, her insurance company did not clear her return until their restoration company had cleaned the rental unit and she received authorization to return.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and 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 units suitable for occupation which warrants that the landlord keep the premises in good repair.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however 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 in making repairs or completing renovations.”

I find the Landlord was responsive to the requests of the Tenant and addressed the lack of hot water in a timely manner. However, I accept that the Tenant suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for the period of time when repair was underway and she was unable to occupy the rental unit. As a result, I find the Tenant is entitled to compensation for that loss.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator 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.”

I am not convinced it was necessary for the Tenant to vacate the rental unit on February 7, 2011; however, I find it more likely than not that the Tenant had to vacate the rental unit on February 9, 2011, due to the loss of use of her kitchen, bathroom and living room facilities and the concrete dust. I accept the evidence of the Tenant that she was not able to return to her rental unit until February 25, 2011, when the restoration company had cleaned the rental unit and she had been cleared to return by her insurance company.

Therefore I find the Tenant is entitled to compensation in the form of a rent abatement from February 9 through February 25 in the amount of **\$463.93** ($\$830.00 \times 12 \div 365 = \27.29×17 days).

I further find that the Tenant incurred a cable bill for a period of time she was unable to use the rental unit and is therefore entitled to compensation in the amount of **\$78.20** ($\139.93, average bill, $\times 12 \div 365 = \$4.60 \times 17$ days).

I find the Tenant established a monetary claim as follows:

Rent abatement	\$463.93
Filing fee	\$50.00

(less rebate paid by Landlord)	(\$200.00)
TOTAL	\$392.13

Conclusion

I find that the Tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$392.13**.

I allow the Tenant to deduct \$392.13 from the next monthly rent payment. However, in the alternative, I grant a monetary order in the amount of **\$392.13**, which may be served on the Landlord and filed in the Provincial Court (Small Claims) 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: April 06, 2011.

Residential Tenancy Branch