

## **DECISION**

### **Dispute Codes:**

MNDC, ERP, RP, RR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation for loss of quiet enjoyment of the suite and devalued tenancy over a 70-day period for a water leak from another suite, and for the duration of the remediation process by the landlord. The tenant was also seeking an order to compel the landlord to make repairs and emergency repairs on the unit.

Both parties appeared and gave testimony during the conference call.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and possibly a rent abatement.
- Whether the landlord should be ordered to complete repairs and emergency repairs.

The burden of proof is on the applicant tenant to prove all of the claims and requests contained in the tenant's application.

### **Background and Evidence**

The tenant testified that on January 27, 2011 water was dripping through the ceiling and this was immediately reported to the landlord. The tenant testified that a maintenance person attended, and cut a hole through the ceiling and placed a bucket beneath the leak. According to the tenant, this was left without further repair until February 8, 2011 when a massive influx of water suddenly poured into the tenant's unit from above. The tenant stated that he was forced to take measures to protect his suite and possessions by bailing water from 4:00 a.m. until approximately 7:00 a.m. when the water was finally turned off. The tenant stated that the ceiling still continued to leak for another two days. The tenant stated that from February 10, 2011 until February 21, 2011 the landlord's

contractors kept dehumidifiers running. The tenant testified that on February 16, 2011, the drywall in his suite was cut out and some of the flooring was removed. The tenant testified that the situation negatively impacted his quality of life and the value of his tenancy. The tenant stated that, when the situation remained unchanged into March, he attempted to contact the landlord several times but received no reply. The tenant testified that he was finally forced to make application for dispute resolution. The tenant feels entitled to a rent abatement of approximately 50% of the value of the tenancy for the entire period and an order to compel the landlord to make repairs.

The landlord testified that it acted immediately to address the emergency situation and took measures as quickly as possible. The landlord pointed out that, because the source of the water leak was in another unit, not under the landlord's control, the appropriate legal steps had to be followed to gain access to this other suite and arrange repairs. The landlord stated that the water damage problem affected more than just the tenant's unit and in fact impacted several other units. The landlord stated that they were required to follow a formal protocol for the insurance claims adjudication. According to the landlord, the affected parties will receive compensation, which has recently been approved to consist of a full month of rent abatement for the tenant, to be deducted from rent owed for the month of May 2011. The landlord pointed out that the tenant did not have his own insurance and feels that the compensation being offered should be seen as fair. The landlord testified that the tenant's inquiries were not answered as there was no tangible information to give the tenant at that time. The landlord stated that the full remediation had to be scheduled for all the units and this could not be accomplished instantly. The landlord stated that the final repair work is scheduled to be completed on April 18, 2011.

### **Analysis - Monetary Compensation**

The tenant was requesting a rent abatement of 50% for the reduction of value of the tenancy, based on the disruption and reduced quality of the tenancy for the entire period in question.

Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act and a corresponding loss.

I find that the landlord and tenant had contracted for a tenancy that included a functional rental unit that was comfortable and liveable. Through an incident that was not caused by the landlord nor by the tenant, the premises being provided were temporarily compromised for a time because of water infusion and the repair work. I find that the process of restoration was onerous for the tenant because of the duration which spanned more than two months. I find that for the period in question, the tenant continued to pay full rent in compliance with their obligation under the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy and his quality of life for a time.

Section 32 of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that the landlord did not violate the Act as the landlord did address the emergency water infusion in a timely manner. I find that the situation was brought under control as efficiently as could be managed given the circumstances. That being said, I still find that there were deficiencies in the condition of the unit while arrangements were being made to schedule the repairs and the landlord was unable to fulfill the contractual obligations of the tenancy agreement for the period in question. I also find that the landlord neglected to keep in touch with the tenant. I find that the landlord had a moral obligation to reassure the tenant in writing that, despite not being able to provide a firm timeline for the remediation, the matter was being attended to as quickly as possible and he would be kept informed. Given the above, I find that a rent abatement of 50% is warranted for the twelve week period from the time the leak began until the planned

completion of the repairs. Accordingly I find that the tenant is entitled to a rent abatement of \$1,165.70 comprised of \$1,115.70 for the rent abatement and the \$50.00 cost of this application.

I find that the portion of the tenant's application seeking an order for repairs must be dismissed as the emergency has been addressed and the residual repair work has now been scheduled. However, I give the tenant leave to reapply should the landlord fail to follow through with the repair work as planned.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby order that the tenant deduct \$880.00 from the next month's rent owed for May 2011 and \$285.70 from the rent owed for the month following that, to satisfy the tenant's entitlement to compensation.

The remainder of the tenant's application is dismissed with leave to reapply.

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 2011.

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Residential Tenancy Branch