



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

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 recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, served personally. The Landlord 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 there been a devaluation of the tenancy for the period the rental unit was undergoing restoration due to a flood?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on August 1, 2009 and switched to a month to month tenancy after January 31, 2010. Rent was payable on the first of each month in the amount of \$1,175.00 and the Tenant paid \$587.50 as the security deposit.

The Tenant testified their unit was flooded on May 10, 2011 due to water coming down from the unit above them. The Landlord brought in a restoration company who cleaned up the mess and left seven fans and two dehumidifiers in the unit. They were advised to leave the fans and dehumidifiers running at all times to dry out the unit. The Tenant advised the noise was loud and unbearable so they had to turn the fans off when they

were at home so they could sleep. He said the smell in the unit was horrible from the dirty carpet and it was impossible to cook in that mess so they had to eat out or bring in takeout food daily. They are seeking reimbursement for the cost of food for seven days of \$840.00 plus a refund of rent paid for the seven days of \$274.00 and reimbursement of the additional hydro costs of \$30.00. He referenced his documentary evidence as proof that he suffered additional costs in hydro. He did not provide receipts for their meals as he did not think he would have to come to dispute resolution to get reimbursed.

The Landlord testified that the temporary property manager and the Landlord handled this situation professionally and respectfully. He referred to the photos in his evidence which were taken on May 13, 2011 which show how the kitchen is completely usable with only two cords plugged into the kitchen wall for fans which were placed in the other room. He states that they had empty units in the building and that he verbally offered the Tenant one of the empty units to move into. He then made reference to the restoration company reports which indicate that the Tenants were turning off the fans which resulted in an extension of the drying time. He instructed the Tenant on May 16, 2011 to stop turning off the fans yet they continued to do it.

The Tenant confirmed they continued to turn off the fans because they would go crazy if they left them running when they were home. They had nowhere else to go so they had to figure out how to reside in the unit and the only way was to turn off the fans when they were home. There were meters on the equipment which displayed the hours the fans were running so the restoration company would have that information. He states the Landlord never offered them an empty unit to move into rather he offered for them to move out; which they could not do because they did not get their new place until May 31, 2011.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included among other things, copies of emails between the parties, documents from the restoration company, the tenancy agreement, usage reports for hydro, and photos taken by both parties.

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.

Neither party disputes that there was a flood that resulted in the rental unit needing restoration. What is in dispute is whether the Landlord offered a vacant unit to the Tenants to move into.

In the case of verbal discussions, when the parties disagree with what was said, the verbal conversation by nature is virtually impossible for a third party to interpret when trying to resolve disputes as they arise. Therefore, in the absence of evidence to the contrary I find there to be insufficient evidence to prove the Landlord offered the Tenants alternate accommodation. The evidence does support the Tenant's testimony that the Landlord offered for them to simply move out.

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.

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."

From the evidence, I accept that it would be unbearable to reside in the rental unit while the fans ran continuously. That being said, I do not accept the Tenants were prevented from using the kitchen. The evidence supports the fans were turned off while the Tenants were home and the fans were located outside of the kitchen, therefore there is insufficient evidence to support they were prevented from cooking or taking their meals inside the rental unit. As per the aforementioned I dismiss the Tenant's claim of \$840.00 for meals, without leave to reapply.

I find that when the residential property is valued somewhat based on its quiet location in an urban centre and the legislation indicates that a tenant is entitled to quiet enjoyment including "freedom from unreasonable disturbance" the right, in this case, is intended to include freedom from unreasonable noise.

While I accept that the landlord took great efforts to minimize his loss there is no evidence to support he took efforts to minimize the disturbances and noise for the tenants. I find it undeniable that the tenants suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I

find the tenants are entitled to compensation for that loss as claimed in the amount of **\$274.00**.

In addition, I accept the Tenant's position that the Landlord failed to take into account compensation for the increased costs of hydro experienced by the Tenant for the duration of the project. Therefore I award the Tenant **\$30.00** for additional hydro expenses.

The Tenant has primarily been successful with his application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$354.00** (\$274.00 + 30.00 + 50.00). This Order must be served on the Respondent Landlord.

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: June 24, 2011.

Residential Tenancy Branch

