



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlords to comply with the Act, regulations or tenancy agreement; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing I determined the tenants no longer reside in the rental unit; therefore, it is unnecessary to issue any for Orders for compliance and the remainder of this decision deals with the tenants' request for monetary compensation only.

Issue(s) to be Decided

Have the tenants established an entitlement to compensation from the landlords under the Act, regulations or tenancy agreement?

Background and Evidence

Both parties provided details submissions and responses to submissions of the other party prior to the hearing and during the hearing. Both parties also provided evidence in support of their positions which I have accepted and considered in reaching this decision. Below, I have summarized the undisputed background information and the positions of the respective parties.

The tenancy commenced in June 2007 and ended May 31, 2011. At the end of the tenancy the tenants were paying rent of \$1,040.00 on the 1st day of every month. The rental unit is a suite located below the landlords' residence.

In the early morning hours of April 8, 2011 the female tenant reported a water leak to the landlords. The landlord immediately attended the rental unit and determined the

leak was a slow leak and that male tenant will be home all day. The landlord asked that the tenants notify him if the leak worsened. The landlord called a plumber and arranged an appointment for the following day.

When the female tenant came home from work later that day she reported to the landlords that the leak had worsened. The landlords called the plumber again and the plumber attended the property that evening. A hole was cut in the ceiling and a small hole in the copper supply pipe was located and fixed. The plumber subsequently returned to repair the faucet in the tenants' bathroom and the drain for the landlords' ensuite bathtub. The hole in the ceiling was left open until April 19, 2011 when the landlord installed a temporary ceiling patch. At the end of April 2011 the tenants gave notice to end the tenancy at the end of May 2011. The landlords permanently repaired the ceiling after the tenants vacated.

Both parties agreed that the tenants enquired about the landlords' insurance policy covering the cost of their damaged loveseat. The landlords enquired with their insurance carrier and then informed the tenants the landlords' policy does not cover tenants' possessions. Rather, tenants' insurance would cover such damages. The tenant acknowledged that they do not carry tenant's insurance.

The tenant submitted that water from the ceiling dripped onto the five month old leather loveseat. As a result the finish on the leather was damaged and water penetrated inside the loveseat. Rather than replace the loveseat a less expensive repair and replacement of the damaged components was made.

The tenants submitted that they suffered a loss of quiet enjoyment of the rental unit because the landlords did not follow the protocol set out for remediating water leaks. The tenants provided documentation from Canada Mortgage and Housing Corporation as to proper remediation of water leaks and claimed the landlord did not follow the necessary steps. Nor did the landlords cut out the wet drywall as instructed by the plumber. As a result the tenants were concerned about the formation of mould during the remainder of the tenancy. The tenant explained that she has difficulty controlling her asthma and had to leave windows open. Further, the gaping hole in the ceiling, and subsequent ceiling patch, was unsightly. The landlords did not offer to sufficiently compensate the tenants and the tenants decided they could not continue to reside in the rental unit.

The tenants submitted that the landlords were previously aware of plumbing issues in the house and did not take sufficient action to assess the condition of the plumbing.

The tenant asserted that the landlord had made a statement along the lines of “the plumbing is hanging on by a thread” in her presence and because the tenants’ faucets and the landlords’ bathroom drain also required repair.

The tenants are seeking compensation for the following amounts:

Item	Description	Amount claimed
Loss of quiet enjoyment	Rent paid for May 2011	1,040.00
Damage to loveseat	Replacement parts	651.49
Damage to loveseat	Installation of replacement parts	130.00
Filing fee		<u>50.00</u>
TOTAL CLAIM		\$ 2,668.82

In response to the tenants submissions the landlords provided the following statements. The landlords denied saying the plumbing was hanging on by a threat or any knowledge of sub-standard plumbing installation. Rather, the landlords submitted that their property is worth approximately \$800,000 and evidence that it was built in 1992. The tenants had initially reported a drip or dripping of water but when the tenants indicated it was worsening the landlords took immediate action to have the plumber attend that same day. The leak in the copper pipe was caused by the pipe rubbing on a nail. The leak in the pipe was not related to the problem with the tenants’ faucets or the landlords’ bathtub drain. The landlords provided a statement from the plumber as to the steps taken to repair the leak.

The landlords submitted that they explained the ceiling repair procedure to the tenants, which included several return trips for drywall mudding, taping and painting. The landlords asked the tenants on several occasions whether they would prefer a temporary patch or a permanent patch as the tenants had indicated they were having company over for Easter. When the tenants did not provide an answer, the landlord proceeded to put up the temporary patch. Since the tenants gave notice to end their tenancy, the landlords waited until after the tenancy ended before permanently patching the ceiling.

The male landlord explained that he is a tradesman and he did cut open the ceiling to let the wet area dry out. After letting the area dry out he then examined the cavity to see if there was mould and when he was satisfied it was not wet or mouldy the cavity was closed up.

The landlords submitted that the windows in the rental unit were left open most of the time, even the colder months, and that leaving the windows open after the leak was not any different than before. The tenant acknowledged that her asthma has been difficult to control even before the water leak.

The landlords submitted that the hole in the ceiling was not a big disruption and does not warrant a refund of the rent the tenants paid. Both parties agreed that at one time the landlords had offered the tenants \$1,040.00 in the form of free rent if the tenants agreed not to pursue the matter any further. The tenants rejected the offer and filed this application.

Analysis

Upon careful consideration of all of the vidence before me, I provide the following reasons and findings with respect to the tenants' application.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[my emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the landlord to repair the rental unit and residential property. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant. Tenant's insurance generally covers damages or loss a tenant may incur as a result of an unforeseen event such as fire or flood.

In light of the above, it is upon the tenants to show that the water leak was a result of the landlords' negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenants has shown that the landlords acted unreasonably in addressing the water leak or knew that there was a reasonable likelihood that the water leak would occur.

Upon review of the evidence before me, I accept that the house was constructed in 1992 and from the photographs provided to me it appears to be reasonably maintained. It is undisputed that the tenants' faucet and the landlords' bathtub drain also required repair around the same time the water supply line leaked. However, I find that it is reasonable to expect that certain plumbing issues involving drains and faucets will require attention in the 19 years that has passed since the house was constructed. I do not find the tenants have established a connection between the need to repair to a faucet and a drain to the integrity of a water supply line, especially when I did not hear any evidence that there had been any previous issues with the water supply lines in the house.

Nor do I find the disputed testimony that the landlord had stated the plumbing was hanging on by a thread to be sufficient to conclude that the landlords knew or ought to have known that a leak in the water supply line was imminent. Therefore, I do not accept the tenants' position that the landlords were negligent in not having the water supply line assessed before the water supply line leaked.

Since I have not found the landlords negligent in the cause of the leak, I make no award for damages to the tenants' loveseat. As outlined above, where unforeseen events such as fires or floods occur the landlords responsibility lies in repairing the rental unit. In the absence of negligence on part of the landlords the landlords are not responsible for damage to the tenants' possessions.

When the landlords became aware of the leak I find the landlords acted reasonably in having a plumber attend the residential property and stop the leak the same day the tenants reported a leak. I accept that the landlords' explanation that the hole in the ceiling had to be left open to allow the cavity to dry as reasonable. I accept the landlords gave the tenants a choice about having a permanent patch or a temporary patch in the ceiling and that this option is not unreasonable given the multiple steps required in completing a permanent patch. I find that it was reasonable that upon receiving the tenants' notice to end tenancy the permanent repair was not made until

after the tenancy ended as this also saved the tenants a lot of interruption during their last month of tenancy.

The tenants submit that the landlords did not take sufficient or adequate steps to prevent mould formation. This may or may not have been the case; however, I did not find sufficient evidence that mould did form or that the tenants suffered a loss from mould formation. The tenants' submission that windows had to be left open after the leak did not satisfy me this was due to a violation of the landlords considering the tenant's pre-existing asthma condition and I heard the windows were regularly left open by the tenants due to the condition.

Where a tenant losses use of a rental unit, even if it is due to no fault of the landlord, the tenant may be entitled to a rent abatement for loss of use. In this case the tenants have submitted that the hole in the ceiling contributed to loss of use and enjoyment of the rental unit due to its unsightly appearance. Upon review of the photographs, I find the hole is unsightly but I am not satisfied that it precluded the tenants from using the floor space below the hole.

In light of the above, I find the landlords acted reasonably in repairing the water leak. Further, I find insufficient evidence the tenants suffered damages or loss as a result of the landlords' actions or any loss of use of the rental unit beyond temporary inconvenience. Therefore, the tenants' application is dismissed in its entirety.

Conclusion

The tenants' application has been dismissed.

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: August 24, 2011.

Residential Tenancy Branch