



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

One of the tenants attended the conference call hearing, gave affirmed testimony and provided evidence to the Residential Tenancy Branch and to the landlords in advance of the hearing. The landlords were represented by an agent who also gave affirmed testimony and provided evidence to the Residential Tenancy Branch and to the tenants in advance of the hearing. The parties were also given the opportunity to cross examine each other on the evidence. All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the tenants entitled to an order that the landlord make repairs to the unit, site or property?
- Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this fixed term tenancy began on March 18, 2010 and expires on March 31, 2012, and the tenants still reside in the rental unit. Rent in the amount of \$2,000.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00.

The tenant testified that the tenants occupy the main and second floors of the building and other tenants occupy the basement.

The tenant also testified that a fire occurred on September 13, 2011 in the rental unit. The tenants noticed smoke and discovered that the inside of a wall was on fire. The tenants called 911, and the landlord's son was removing weeds outside of the rental unit using a tiger torch or similar apparatus and didn't notice that he had set the house on fire. The tenants all got out of the house without injury, and the basement suite hadn't been affected until the landlord's son opened the door to the crawl space in an attempt to put out the fire, and smoke entered the rental unit. The fire department had to remove a good portion of a wall and sent someone to put support braces up in order to make the structure safe.

The tenant also called the landlord and the landlord's agent who attended this hearing. The landlord attended and was told by the fire department to call the insurance company. Large holes were left in the wall, big enough to allow someone to crawl through, and the tenant requested that the landlord contact the insurance company so repairs would be safer, but the landlord wanted to board up the holes and decided the place was safe to occupy. The tenant and the fire department disagreed, and the tenant's family stayed with friends for the night.

The tenant returned to the rental unit to get clothing for the family and stated that no one was at the back of the house and no boarding was done. The tenant met with a fellow at the front of the house who turned out to be the insurance adjuster. The tenant took the adjuster to the back of the house, and the adjuster told the tenant that the landlord had provided an incorrect address so the adjuster was late. The landlord and the landlord's son showed up and yelled at the adjuster for being late and at the tenant accusing the tenant of having too many people in the rental unit. The landlord became quite aggressive, and then left.

The affected area on the inside of the rental unit was mostly the family room, which is the room most used by the tenant's family. The holes in the wall were boarded up that night but were not properly sealed up until September 15, 2 days after the fire. The rental unit suffered water, smoke and fire damage. The restoration employee and the fire prevention employee both recommended that the tenants not return to the unit yet, so the tenant's family did not return to the rental unit until September 17.

The tenant also testified that workers hired by the landlord are not tradespersons and are sent without any notice to the tenants. The tenants still have no cable TV and it will cost \$150.00 to reconnect it in another room. The tenants have no idea when the repairs will be finished.

The tenant further testified that prior to the fire, the tenants' suite was robbed and they've been on edge. They have been concerned about boarding up the rental unit to prevent another robbery.

The tenant also testified that a construction worker advised that he was given strict instructions to re-build around rotted wood in the walls. The City inspected the house the week of this hearing, and deemed the unit not safe, and the landlord had to remove the repairs done and take out the rotted wood. Repairs had not been started at the time the tenants filed the application for dispute resolution on October 3, 2011.

The tenant also testified that the landlord offered a settlement of this dispute but only in the event that the tenants vacate the rental unit on November 1, 2011, and the tenants do not feel that moving on November 1, 2011 is a realistic offer.

The tenants claim the \$1,000.00 deductible for their insurance, \$300.00 for each month of lost space in the rental unit, and \$2,000.00 for inconvenience and the landlord's treatment of the tenants.

The landlord's agent testified that everything that can be done to complete repairs is being done. The insurance company was called right away. The landlord was never told by the fire department that the tenants shouldn't stay there, and the landlord's agent denies that the landlord made an offer that was subject to the tenants moving on November 1, 2011; that was given as a hypothetical in a verbal conversation. An offer was made by email to the tenants on September 22, 2011, a copy of which was provided in advance of the hearing, assuming the tenants wanted to move prior to the end of the fixed term.

The agent further testified that the insurance company and the restoration company said the house is safe to live in; it's been sealed. Further, any work being done without notice to the tenants is being done in a common area.

The landlord also provided a copy of emails exchanged between the parties, as well as a copy of the tenancy agreement and invoices that prove that the work is being done. The first email is dated September 22, 2011 wherein the landlords' agent states that the landlords propose compensation for the tenants if they decided to terminate the tenancy. The offer was to pay for the insurance deductible, free rent for the month of October, 2011, to find a moving company and pay for the move, and reimburse the tenants \$300.00 for the month of September, "...calculated on the proportionate living area of the house where 15% of the total living area is identified to be uninhabitable."

The tenant responded by email on September 25, 2011 agreeing to the offer with the exception of moving, and the tenant states that the tenants have no intention of moving. The landlords' agent responded to that email stating that if the tenants were not moving, the landlords were only agreeing to a rent reduction of \$300.00 per month for each month until the affected area is restored. The landlord then agreed to pay the \$1,000.00 insurance deductible once proof of that amount is received, a \$300.00 reduction in rent per month and \$500.00 payable to the tenants from the landlord as goodwill for this incident. The landlords' agent did not mention moving except in the first email. The landlords' agent testified that the tenant had indicated that the rental unit was uninhabitable, and if the tenant was moving, the landlord would have, at that time, provided the tenant with a free month of rent for October.

Analysis

The *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. In this case, the landlord's son caused a fire, and I accept the evidence of the tenant that the tenants were not able to stay in the rental unit from September 13 to 16, 2011 and returned on September 17, 2011. I further find that no rent ought to be payable by the tenants for 3 days, and in a month that has 30 days, the amount of rent payable is \$66.67 per day. Therefore, the tenants shall a monetary order in the amount of \$200.00.

I further accept the testimony of the tenant that the tenants were required to pay a deductible on their insurance however the tenants have not provided any evidence of the amount of that deductible. Therefore, I find that the tenants are entitled to recovery of that amount, but I order the tenants to provide the landlords with proof of the amount, and I order that the tenants be permitted to reduce future rents payable by that amount. In the event the parties are not able to agree as to the amount paid by the tenants, the parties will be at liberty to apply for dispute resolution and the tenants will be put to the strict proof thereof.

Further, the tenants have not provided any evidence that having the cable TV re-connected will cost \$150.00, although I am satisfied that the cable was affected by the fire, and I find that the landlord should bear that cost.

I have read the emails of the landlords' agent and the tenant which were provided by the landlord. In the emails, the parties seem to agree that the portion of the house that is affected by the fire is 15% of the living space in the rental unit. I find that amount to

be reasonable, and I order that the tenants be reimbursed the amount of \$300.00 per month for every month or partial month until repairs to the inside of the rental unit are completed, commencing with the month of October, 2011. I further order that the tenants be reimbursed ½ of that amount for the month of September, 2011, or \$150.00.

The tenants also claim damages in the amount of \$2,000.00 for the poor treatment of the tenants by the landlords after the fire occurred. It is clear in the evidence that the tenants did not cause the fire, but the fire was caused by the landlords' son who was doing work on the property, assumingly at the request of the landlord. In this case, the tenant's testimony described being yelled at by the landlord and by the landlord's offer to settle this dispute if the tenants moved out of the rental unit. I accept the evidence of the landlords that moving out was only referred to on one occasion shortly after the fire, and the landlords at that time believed the tenants wanted to move out and break the terms of the fixed term tenancy. I believe the tenants misunderstood the landlords' position on the issue.

I refer to Residential Tenancy Policy Guideline 16 – Claims in Damages, which states as follows:

Types of Damages

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered in the contract that the breach complained of would cause the distress claimed.
- The must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.

They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must be specifically sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

In a claim for breach of contract,

"The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out.

"Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected."

"Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering."

Having found that the tenants are entitled to damages for having to stay with friends, and that the tenants are entitled to damages for loss of a portion of the rental unit, and having found that the landlord ought to pay the deductible for the tenants' insurance, I do not find that the tenants are entitled to any additional relief for the landlord's poor behaviour or bad manners.

The tenants are entitled to recovery of the \$50.00 filing fee for the cost of this application.

In summary, I find that the tenants are entitled to \$200.00 for not being able to stay in the rental unit from September 13 to 16, 2011; \$600.00 for the months of October and November, 2011 for loss of the living space; \$150.00 for the month of September for loss of the living space; \$300.00 per month or partial month until such time that the rental unit is repaired; recovery of the insurance deductible once the tenants have provided proof of that cost to the landlord; the cost of re-connecting the cable for the TV; and \$50.00 for recovery of the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,000.00. This amount may be deducted from future rents payable or otherwise collected.

I further order the landlords to make all of the repairs in a timely fashion.

The tenants will not be required to file a further application in order to collect the \$300.00 per month or partial month until such time that the rental unit is repaired, or recovery of the insurance deductible once the tenants have provided proof of that cost to the landlord, or recovery of the cost to re-connect the TV cable; but I leave it to the parties to determine those amounts and dates. I further order that the tenants may reduce the monthly rent payable by those amounts, or otherwise recover those amounts. If the parties cannot agree, the tenants will be at liberty to further apply.

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: November 16, 2011.

Residential Tenancy Branch