



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, OLC, RP, RR

Introduction

This hearing dealt with an application by the tenant for a monetary order as well as a number of other orders. Both parties participated in the conference call hearing.

At the hearing the tenant withdrew all of his claims save the claim for a monetary order.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

This claim arises from a flood which occurred in the rental unit on October 14, 2011. The parties agreed that at approximately 9 p.m., a cold water pipe disconnected, flooding part of a bedroom, the hallway and the kitchen. There was no dispute that the tenant immediately contacted the resident manager and that the fire department attended and assisted in extracting water.

The tenant testified that the resident manager and an attending member of the fire department advised him that the rental unit was uninhabitable, suggesting that he, his wife and his month old baby stay at a local hotel. The tenant and his family stayed in a hotel for 8 nights. He testified that his hotel expenses totalled \$1,153.56 that he incurred an additional \$700.00 in expenses for food. The tenant seeks to recover \$1,000.00 which he claims is the amount of his insurance deductible.

The tenant claimed that 1/3 of the floor area of the rental unit was soaked with water and he was fearful that mould and damp would cause health problems for his family. He claimed the unit was not only unsafe, but could also not be occupied because a dehumidifier and fans were in the rental unit for 8 days generating noise and taking up valuable space. He testified that he was in contact with the resident manager during this period and that she told him that the fans and dehumidifier were still operating in the unit. He stated that he was waiting for confirmation from some public authority to

indicate that an inspection had been performed and the unit had been deemed safe for occupancy, but stated that as of the date of the hearing, no such confirmation had been issued. The tenant also objected to having to pay for the hydro usage of the equipment used to dry the unit.

The landlord testified that when he was advised of the flooding, he immediately contacted a plumber who repaired the deficiency and a restoration company which attended the same evening to extract water and set up the dehumidifier and fans. The landlord stated that he specifically told the resident manager to tell the tenant not to relocate and that several days after the flood, he spoke directly with the tenant to advise him that it was safe to stay in the rental unit and that he would not pay for the tenant's hotel costs and related expenses.

The landlord testified that the rental unit was habitable the same day as the flood because the repair was performed immediately and the water was extracted. He acknowledged that living with the dehumidifier and fans would probably lead to some degree of loss of quiet enjoyment but took the position that there was no reason why the tenant and his family could not have resided in the unit. The landlord stated that neither the fire department nor the restoration company had indicated to him or to the resident manager that the unit had to be vacated and noted that no official orders had been issued requiring vacancy.

The landlord questioned whether the tenant's insurance policy required a deductible as the policy indicated that a claim for loss of personal property was subject to a \$1,000.00 deductible but for a claim for loss of use of the dwelling, the deductible was included. The landlord also noted that the tenant had not yet paid the deductible. The tenant indicated that he anticipated that

There was no suggestion that the landlord either deliberately or negligently caused the flood.

Analysis

The tenant claimed the cost of his insurance deductible. Although he has not characterized his claim as a claim for loss of quiet enjoyment and monies that he is out of pocket as a result of the flooding, his arguments during the hearing made it clear that his claim also encompasses a loss of quiet enjoyment.

Pursuant to section 32(1) of the Act, the tenant has a statutory right to a rental unit which is suitable for occupation and complies with health, safety and housing standards required by law. I accept that the tenant had to stay in a hotel on the night of October

14. Although the landlord acted quickly to repair the leak, extract water and set up fans and a dehumidifier, the flooding occurred in the evening and I find that the tenant reasonably expected that he would not be able to sleep in the unit that evening while remedial work was being performed. Had the flooding occurred earlier in the day, it might have been reasonable to have expected the tenant to remain in the unit that evening. However, because of the time at which it occurred, I find that a hotel stay on that night was reasonable. Although the landlord was not at fault for the leak, he had an obligation to provide a habitable rental unit and was unable to provide that on the night of October 14. I award the tenant \$142.91 which represents the cost of the hotel room, HST and hotel tax for one night.

I note that the landlord suggested that the calculation of any monetary award should be no higher than the amount of rent payable for the period of time in question. While this is reasonable for a calculation for loss of quiet enjoyment, it should be reasonably anticipated that the cost for temporary housing could exceed what is payable for rent should alternate housing be required for a period during the tenancy. As this is an expense which should have been reasonably anticipated as flowing from the landlord's inability to fulfill his obligation, I find that the amount of rent payable for the night in question should not operate as a cap to the tenant's claim.

The landlord also questioned whether a deductible was payable. In reading the tenant's policy, it appears that the policy provides that a \$1,000.00 deductible is applied to a claim for loss of personal property and that if a claim for loss of use of a dwelling is made, there is not a separate deductible, but the same deductible is applied. The policy also states that for other types of claims, such as personal liability, voluntary medical payments, etc., the deductible is not applicable, indicating that no deductible is applied. If no deductible were to be applied to a claim for loss of use of the dwelling, I find it likely that the policy would have expressed it in a similar way. I find it more likely than not that a deductible is applied to a claim for loss of use of a dwelling.

The tenant bears the burden of proving that the rental unit was not habitable for the remaining 7 days for which he is claiming compensation. I am not satisfied that this is the case. There is insufficient evidence to prove that the damage caused by the flooding was so severe that a public authority was required to inspect the unit or declare it to be habitable. Although living with the dehumidifier and fans would have posed an inconvenience, I am unable to find that the presence of those machines rendered the unit uninhabitable. There is also insufficient evidence to show that it would have been unsafe to stay in the rental unit. The tenant's belief that it was unsafe, however firmly held that belief may have been, is not sufficiently persuasive.

The tenant attempted to mitigate his anticipated loss of quiet enjoyment by staying in a hotel. I have found that it was unnecessary for him to do so and I find that the landlord should not have to bear the burden for the tenant having taken extreme measures to address a problem which was not as catastrophic as he believed. I accept that the tenant would have suffered some loss of quiet enjoyment had he stayed in the rental unit on the nights of October 15 – 21 and I find that an award of \$125.00 will adequately compensate him for what this loss would have been.

Conclusion

The tenant has been awarded a total of \$267.91 and may deduct this amount from future rent owed to the 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: November 15, 2011

Residential Tenancy Branch