



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants 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 Landlords for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the tenants, and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants suffered a loss of quiet enjoyment of their tenancy?
2. If so, are then entitled to monetary compensation as a result of that loss pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties agreed they entered into a one year fixed term tenancy agreement that began on August 1, 2011. Rent is payable on the first of each month in the amount of \$1,280.00 and prior to the onset of the tenancy the Tenants paid \$640.00 as the security deposit.

The Tenant affirmed that shortly after the start of their tenancy, September 22, 2011, there was a water leak from the unit above them. They contacted the Landlord's agent who told them to inform the strata council. After the damage was assessed they contacted the Landlord's agent to advise they could not afford to live elsewhere during the repairs and she told them that if they wanted compensation they needed to go to the strata or the tenancy board because this damage was caused by others and not them.

The Tenant stated that, his pregnant wife, himself and their small child had to stay in the unit for four days with the dehumidifier running, plus four days during the repairs with drywall dust everywhere, and they had to clean up the apartment afterwards. He stated that although the damage was contained to mostly the bedroom the drywall dust was everywhere so they had to wash walls and floors and the dust even got on their furniture. His wife had to sleep on the couch in the living room while he slept in his son's room. They are seeking \$512.04 (12 days x \$42.67 per day) as compensation for having to live in these conditions and having to deal with all the contractors and strata business during the repairs.

The Agent affirmed she told the Tenants she is not the owner and cannot authorize a deduction in rent so she instructed them to file for a dispute. She states she has a written agreement with the Tenants to allow them to report emergencies to the strata but she did not tell the Tenants to try and collect compensation from the strata for having to live through these repairs. She states she was informed by the tenancy board that she does not have to pay the Tenants if they remained in the unit.

The Owner advised she is currently out of the country and that she was advised of this situation via e-mail. She confirms telling her Agent that she does not need to pay the Tenants because this is the strata's issue.

Analysis

Based on the foregoing, the relevant written submissions and photographic evidence provided by the Tenants, and on a balance of probabilities, I find as follows:

I accept the Tenant's evidence that during the repairs to their rental unit there may have been times that their use of the full rental unit was restricted, such as use of the bedroom or other areas due to drywall dust, but that those restrictions were temporary in nature.

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.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make

suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

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 or completing renovations.”

I find it undeniable that the Tenants have suffered a loss of quiet enjoyment for approximately twelve days (4 days during dehumidification, 4 days of repairs, and 4 days of cleaning) as a result of the repairs of the September 22, 2011 flood; 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.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As such, I make note that the project work would have been completed Monday to Friday during normal business hours however the Tenants would have been inconvenience by sounds of the dehumidifier 24 hours per day for the four days and they were restricted from using their bedroom for another 4 days. I accept that it took the Tenants another four days to clean the entire rental unit to remove the drywall dust.

Based on the aforementioned I hereby award the Tenants monetary compensation in the amount of **\$341.36** (\$170.68 for the four days of dehumidification, plus \$85.34 for loss of use of the bedroom, plus \$85.34 for cleaning).

The Tenants have primarily been successful with their application; therefore I award full recovery of the **\$50.00** filing fee.

Conclusion

The Tenants’ decision will be accompanied by a Monetary Order in the amount of **\$391.36**. This Order is legally binding and must be served upon the Landlord(s). If this tenancy is continuing, the Tenants are at liberty to collect this one time award by deducting \$391.36 from their next rent payment.

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: February 22, 2012.

Residential Tenancy Branch