



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, ERP, RP, PSF, RR, FF

Introduction

This hearing was convened to address an application by the tenant for a monetary order, an order that the landlord comply with the Act, perform repairs and provide services and an order permitting the tenant to reduce his rent. Despite having been served with the application for dispute resolution and notice of hearing via registered mail on February 29, 2012, the landlord did not participate in the conference call hearing.

Issue to be Decided

Is the tenant entitled to a monetary order?

Should the landlord be ordered to comply with the Act?

Should the landlord be ordered to perform repairs and provide services?

Should the tenant be permitted to reduce his rent?

Background and Evidence

The tenant's undisputed evidence is as follows. The rental unit is in the basement of a residence in which the upper floor is occupied by a third party. The tenant currently pays \$900.00 in rent each month.

The rental unit flooded in 2008 and again in 2010. On January 4, 2012, the tenant awoke to discover ankle deep water on the floor of the rental unit. The tenant immediately contacted the landlord on the landlord's cell phone and was told not to call again because the landlord was in Hawaii. The tenant and his family acted immediately to extract water, move his furniture and remove carpets. The tenant discovered that the sump pump was not automatically starting as it should when the water level rose and turned it on so it ran continuously, but had to turn it off due to complaints from the occupants of the upper level of the home. Over several days the tenant had to check the water level in the sump pump well every few hours and lost sleep as a result. On January 6, the tenant again contacted the landlord and shortly thereafter, an employee of the landlord brought the tenant a wet/dry vacuum. The tenant extracted all the water

possible and left the carpeting outside the rental unit where it was later removed by the landlord's employees.

On January 20 the rental unit flooded again and after advising the landlord, the tenant again had to extract water. The unit flooded a third time on January 21. The landlord has since replaced the pump, but the tenant asks that the landlord be ordered to install a pump with an alarm and a back up pump in order to reduce the risk of flooding in the future. The tenant further requests that the landlord be ordered to inspect the flooring throughout the unit for mould, replace flooring and subflooring as required and reinstall new carpet.

The tenant seeks to recover the cost of replacing 2 year old furniture which was damaged by the floods. He obtained a written estimate showing that it would cost \$3,859.00 to replace a sofa, loveseat, chair, entertainment unit, coffee table and end table. The tenant further seeks payment for his labour in responding to the 3 floods. He testified that in January, he paid just \$180.00 in rent and gave the landlord an invoice for \$720.00 to compensate him for his labour. He has paid no rent in the months of February and March.

The tenant seeks a 50% reduction in his rent reflecting the reduced value of the rental unit beginning in January and continuing until the landlord has completed repairs.

The tenant received a notice of rent increase which is to take effect on May 1 and which purports to raise his rent from \$900.00 per month to \$950.00 per month and seeks an order that the landlord comply with the Act with respect to that increase.

Analysis

I accept the tenant's undisputed evidence and I find that the rental unit requires repairs. The photographs show that linoleum and the flooring beneath the carpet has been affected. I am not satisfied that the unit requires the alarmed sump pump with a backup pump as requested by the tenant. With respect to both repairs and the pump, I find it appropriate to rely on professional opinion. I therefore order the landlord to hire a company that specializes in flood restoration to perform the repairs recommended by that company, which will specifically address the subfloors, the floor coverings and any affected drywall and mouldings throughout the rental unit. I further order that the landlord hire a professional plumber to inspect the sump pump and make a determination as to whether the pump is adequate. If the plumber determines that the pump is inadequate, I order the landlord to comply with the plumber's recommendations on how best to fit the basement with a sump pump that will work effectively.

As a general rule, a landlord is not the insurer of a tenant's goods and is not held responsible for loss to the tenant's goods. However, where the landlord has been negligent and has not met his duty of care to the tenant, the landlord can be held responsible for those goods. I find that in the circumstances, given that there had been two previous floods in the unit, the landlord was aware that there was a potential for flooding in the rental unit and that his failure to act led to the tenant's losses. The furniture in question was subjected to 3 floods within the period of one month and conceivably those losses could have been averted or minimized had the landlord acted quickly upon hearing of the January 4 flood. I find that the landlord had a duty of care, breached that duty and that as a result of his negligence, the tenant lost his goods.

The tenant claimed that the discarded furniture was just 2 years old but did not provide receipts showing what was paid for the furniture when purchased. He provided an estimate showing that it would cost \$3,859.00 to replace the items. Without the benefit of proof of the original cost and the extent of the damage to the items which would enable me to determine whether they had to be discarded or had merely diminished in value, I am unable to award the entire estimated cost of replacement. I find that an award of \$1,000.00 will adequately compensate the tenant for the discarded items and I award the tenant this sum.

I find that the tenant performed most of the labour associated with the flood although it was the landlord's responsibility to do so. The tenant claimed a total of \$1,140.00, which represents \$720.00 in labour associated with the January 4 flood and \$420.00 in labour associated with the January 20 and 21 floods. I find these claims to be reasonable and I award the tenant \$1,140.00.

I find that the tenant is entitled to a rent reduction as the value of the rental unit is significantly diminished as a result of the damage caused by the floods. The tenant claimed a 50% reduction, but I find this to be excessive as the tenant is still able to sleep and cook in the unit and keep his possessions there. I find that a 25% reduction will adequately compensate the tenant. The tenant's rent is currently \$900.00 per month. For the months of January – March inclusive, I award the tenant \$675.00 which represents \$225.00 for each month. The tenant may reduce future rental payments by \$225.00 for each month in which the aforementioned repairs are not performed. If all repairs are completed by the end of March, the reduction would not be applied in the month of April. If the repairs are completed in a month after that month's rent is due, the reduction would stop in the following month. If the parties cannot agree that repairs have been adequately completed, the landlord must file an application for dispute resolution in order to reinstate the full amount of rent.

As for the notice of rent increase, I find that it is ineffective and I order it to be set aside. Under the *Residential Tenancy Regulations*, the landlord may not raise rent in 2012 by more than 4.3%. The notice purports to raise the rent by over 5.5% and for that reason I find that it is invalid. The tenant's rent will remain at \$900.00 per month less any deductions granted under this decision until it is raised through the issuance of a valid notice of rent increase.

I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring his application and I award him \$50.00.

Conclusion

The landlord is ordered to perform repairs by hiring a flood restoration company to effect repairs to the sub-floors, floor coverings, drywall and moulding and by hiring a plumber to evaluate the effectiveness of the sump pump and replace it if required. Until these repairs are completed, the tenant may reduce his monthly rent by \$225.00.

The rent increase which was to take effect on May 1, 2012 is set aside.

The tenants is awarded \$2,865.00 which represents \$1,000.00 for damaged furniture, \$1,140.00 for labour, \$675.00 for a retroactive rent reduction for January – March inclusive and \$50.00 for the filing fee. The tenant was contractually required to pay \$900.00 in rent for each of the months of January, February and March and paid just \$180.00. The tenant's award exceeds the \$2,520.00 owing in rent and I find that the rent owing for those months has been fully satisfied by this award. The tenant may deduct the balance of \$345.00 from rent due in April, which will reduce his rent to \$555.00. If the aforementioned repairs are not completed by the time April's rent is due, the tenant's rent will be reduced by a further \$225.00, leaving a balance of \$330.00 payable for that month.

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: March 15, 2012

Residential Tenancy Branch