



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, RR

Introduction

This hearing was convened by way of conference call in response to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement, for an Order for the landlord to make repairs to the unit; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?

- Is the tenant allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this tenancy started on August 01, 2012. This is a fixed term tenancy which is due to expire on July 31, 2013. Rent for this unit is \$1,100.00 per month due on the first of each month.

The tenant testifies that when the move in inspection was done the wooden flooring appeared to be in bad shape. The tenant has provided a copy of the move in condition inspection report in which the landlord has documented that the floor is in rough shape with wear and tear. The tenant testifies that since moving into the unit they have found the floor to be in a very poor condition with large splinters protruding from the floor; lots of nails sticking out of the floor; and uneven discolouration and dirt ingrained in the floor. The floor is also warped and has tripping hazards with uneven boards; it is decaying and rotten in places; it squeaks loudly as the tenants walk around; and slopes in different directions. The tenant has provided detailed video and photographic evidence showing these conditions on the flooring.

The tenant testifies that wooden edges of the floor are also coming away leaving holes and gaps in the walls and nails sticking up from the wood which is potentially dangerous if one of the tenants were to inadvertently step on them. The tenant testifies that the useful life element of the flooring is 20 years and a flooring man, the tenants contacted to look at the floor, has estimated that this flooring was last finished about 15-20 years ago and the flooring is much older than that.

The tenant testifies that they called the property manager and requested repairs to be made to the floor; however the landlords attempted to use this as a tool to renegotiate the rent if they repaired the floor. The tenant states the rent they pay is comparable to

other units in the building and although the landlord has said they reduced the rent due to the condition of the floor this is not the case as other units are also advertised for the same rent. The tenant has provided photographic, video and documentary evidence to show a similar unit in the building having the floors finished before new tenants moved in and this was advertised at the same rent. The tenant testifies that the landlord said the tenant had agreed that the floor would not be finished for a rent of \$1,100.00; when this was not the case.

The tenant testifies that the advertisement showed the wooden flooring as a feature of the unit did not describe the poor condition the flooring was in. The tenant testifies that when he first viewed the unit the previous tenant was still in residence and had boxes on the floor and poor lighting so the tenant was not able to see the true condition of the floor at that time.

The tenant seeks an Order for the landlord to comply with the *Act* and ensure the floor is repaired and refinished.

The tenant seeks a reduction of \$140.00 a month for four months of the tenancy due to the reduction in the value of the tenancy due to the condition of the floor.

The tenant seeks compensation for the loss of the use of the rental unit for the two days the landlord has stated it will take to refinish the floor. The tenant has calculated this on rent charged on a daily basis to the sum of \$74.00.

The tenant also seeks compensation from the landlord as the tenant will have to remove his belongings from the unit while the work on the floors takes place. The tenant has accepted the landlords offer to store his belongings wrapped in a cover and labelled while the work takes place however the tenant seeks compensation for a hotel for two days at an amount of \$400.00.

The tenant also seeks compensation from the landlord of \$3,945.00 for damage caused by the nails in the flooring to the tenant's shoes and sandals, a pair of trousers and a pair of shorts. The tenant also states his body was scratched by nails when he first moved in and had to sleep on the floor. The tenant has provided photographic evidence showing holes in the bottom of a pair of sandals and flip flops, some leather shoes with damage on the toe of the shoe and marks on the soles and an L shaped tear in the trousers and shorts. These pictures also show a scrape on the tenants arm.

The tenant claims the sandals are orthodontic sandals and the shoes are Italian leather. The tenant testifies that as he takes a small size in shoes and clothes he has to have his clothes custom made and it is difficult to replace shoes. Therefore the tenant seeks to recover the sum of \$800.00 for the sandals, \$900.00 for two pairs of shoes, \$300.00 for the trousers, \$70.00 for the shorts and \$30.00 for the flip-flops. The tenant also seeks compensation for the physiological pain and trauma to the sum of \$2,700.00.

The landlord's agent agrees that the floor in the tenants unit is in rough shape however the landlords dispute the tenants claim for compensation on the grounds that the tenant was in a hurry to get into the unit and was persistent with his application after it was first declined. The landlord's agent testifies they told the tenant there may be a delay with him moving in because of the condition of the flooring but he remained persistent as he wanted to move in as quickly as possible. The landlord's agent testifies that they told the tenant they had to paint the unit but could not guarantee the flooring. The landlord's agent testifies that the flooring did not pose a threat so the tenant's application was approved and they noted the condition of the floor on the move in inspection.

The landlord's agent testifies that on July 31, 2012 the tenant was allowed to move in earlier and he advised the landlord that the floor needed work. The tenant requested this again on August 20, 2012 and the landlord sent a flooring company into the unit to pull up some nails. On September 05, 2012 the tenant again requested work on the floor and the landlord scheduled a date for the flooring to be refinished for September

20, 2012. The landlord's agent testifies that the tenant would not agree to this date unless the landlords agreed to give the tenant compensation.

The landlord's agent testifies they had a letter from a flooring company who had looked at the floor who have written to say it is all cosmetic work that is required. The tenant has not yet rescheduled a time to carry out this work as the tenant is waiting for the landlord to agree to compensation so the landlord suggested to the tenants that he took this matter to the Residential Tenancy Office.

The landlord's agent therefore disputes the tenants claim for compensation and for an Order for the landlord to comply with the *Act*. The landlord also disputes the tenants claim for a rent reduction. The landlord's agent testifies that this is the first they have heard about any damage to the tenants clothes or shoes and the landlord also disputes the tenants claim in this respect.

The tenant disputes the landlords claim and argues that he first called the landlord after the move in condition inspection. The tenant testifies that the landlord informed the tenant that the unit would be available on July 31, 2012 and that the unit would be in a satisfactory condition. The tenant testifies that they had alternative accommodation available to take if the unit had not been available.

The tenant disputes the landlords documentary evidence namely the letter from the flooring company which states the damage to the floor is cosmetic. The tenant argues that his pictures and video show this is not the case and the tenant believes the flooring company are beholden to the landlord as they get their work from the landlords. The tenant testifies he made requests for repairs on July 31, August 20 and August 29, 2012 however the landlord was aware of the condition of the floor on the day the move in condition inspection was completed.

The tenant testifies that he refused to allow the landlord to start work until the issue of compensation was resolved as the tenant was unaware he could have had the work

done and then applied for compensation. The tenant testifies the landlord was using this as a bargaining tool to force the tenant to give up his right to compensation.

The landlord's agent argues that they have no financial obligation to the flooring company who assessed the condition of the floor and wrote the letter concerning its condition.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32(1) of the *Act* which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 5 of the *Act* states

5 (1) *Landlords and tenants may not avoid or contract out of this Act or the regulations.*

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Having reviewed the evidence before me it is my decision that the landlord knew the poor condition the flooring was in at least at the time the move in condition inspection was done as it is clearly documented on the condition inspection form. The landlord therefore had an obligation to remedy this as soon as possible without further requests from the tenant for repairs.

I further find that the landlords flooring company who looked at the floor has stated that the hardwood is in good condition with a refinish only being necessary to improve the cosmetic appearance of the floor. This person states he did remove some nails that had lifted and reset some other nails but did not move the tenant's possessions. He did check the crease (unclear word) that can be prone to moisture and there was no evidence of water damage or mould. The letter goes on to say that the discoloration of the oak is due to normal wear and tear of the finish. The property manager has provided a copy of a letter she then wrote to the tenant that states the hardwood floor is in need of refinishing to maintain the original hardwood which is currently in good condition with no damage to the boards. This is more of a cosmetic work and is not a liability to any residents.

It is clear from the tenant's video and photographic evidence of the wooden flooring that this is not the case. The floor is clearly not in a good condition. Sections of the flooring have deteriorated beyond normal finishing, areas of the floor do appear to have built up dirt ingrained within the wood, there are nails sticking up and nail holes, there are areas where the wood has splintered and areas where the wood appears to be rotten. The wood trim on the walls has come away in areas exposing large nails which do pose a potential risk to the tenants. I also have concerns about the condition of the walls in the areas where this wall trim has come away as it appears to also be in a poor condition.

Consequently, I find the landlord has not complied with section 32 of the *Act* and the landlord may not opt out of the *Act* by saying that the tenant wanted to move in sooner so the work could not be done. It is the landlord's responsibility to ensure the rental unit is suitable for occupation in accordance with s. 32 of the *Act*.

With regard to the tenants claim for compensation for the loss of use of the rental unit while the landlord makes the repairs. The tenant and landlord both agree this work will take two days however, the landlords assumption is based on their claim that the floors just require refinishing and as I have determined that potentially the floors could require more work than simply refinishing them I will allow the tenants claim for compensation for two days loss of use of the rental unit to the sum of **\$74.00** and will allow the tenant to reapply for any further days for any extended work required if the tenant and landlord cannot resolve that issue themselves at the time.

With regard to the tenants claim for compensation for hotel costs while any work on the flooring takes place. The tenant has provided no evidence to show how much a hotel will cost per night however as the parties have agreed this work will take two days I will allow a nominal sum to be awarded to the tenant for two nights in a hotel to the sum of \$150.00 per night to the total sum of **\$300.00**.

With regard to the tenants claim for compensation for shoes, sandals and clothing damaged by nails; I have considered the tenants evidence and find some of the marks on the sandals appears to be minimal and no more than a person may get from walking outside. However, there are clearly what appears to be some nail holes in the bottom of the sandals and it is my opinion that these nail holes have not gone through the sandal and the integrity of the sandals are intact. I also find the sum the tenant has requested in compensation for the sandals to be extravagant with no evidence to support the value of these sandals or that they are indeed orthodontic sandals. I further find the damage to the flip flops to be minimal and the amount claimed to be extreme. Consequently, I limit the tenants claim for damage to the sandals and flip flops to the sum of **\$50.00** and **\$10.00** respectively.

The photographic evidence shows some damage to the leather shoes with some marks on the bottom of these shoes and one pair has a mark on the toe of the shoe. The tenant has provided no evidence to show the cost for either a repair or replacement of these shoes and I am of the opinion that any nail damage could be repaired to both the soles and the toe of the shoes and has not rendered the shoes irreparable. Therefore I limit the tenants claim in this respect to the sum of \$50.00. The tenant also claims the trousers and shorts were damaged by nails. I am of the opinion that the damage shown in the photographs is consistent with damage caused to clothing by nails and therefore I find it is likely that these items were damaged by the nails from the flooring. However I am not satisfied that the replacement cost for these items would be \$370.00. I therefore find the tenants claim to be extravagant and limit the claim to the sum of **\$70.00**.

With regard to the tenants claim of \$2,700.00 for physiological pain and trauma; this type of claim is difficult to proof and the tenant has provided no evidence to support his claim that either he or his wife suffered from physiological pain and trauma for example by providing a letter from their doctor or counsellor. The tenant has the burden of proof in this matter and while I accept that dealing with the flooring on a daily basis would be frustrating I do not accept that this caused physiological pain and trauma. Consequently this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim to reduce rent by \$140.00 per month for a period of four months that the tenants have had the value of their tenancy reduced. I find the landlords did agree to refinish the floors on September 20, 2012 and the tenant refused to allow the landlords to do this work until the matter of compensation was resolved. The tenant could have allowed the landlords to do the work required to the floor and then filed an application for Dispute Resolution after the event if the landlords were unwilling to provide compensation to the tenant. Consequently, I will allow a rent reduction from August 01, 2012 to September 20, 2012 to the sum of \$140.00 for August and \$93.00 for September to a total sum of **\$233.00**.

The tenant monetary award has been calculated for the following amount:

Future loss of use of unit for two days	\$74.00
Two nights hotel stay	\$300.00
Damage to sandals and flip flops	\$60.00
Damage to shoes	\$70.00
Rent reduction	\$233.00
Total amount due to the tenants	\$737.00

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. I Order the tenants to reduce their rent by the sum of **\$737.00** when it is next due and payable for a one off payment to cover the tenants monetary award.

I Order the landlord to comply with s. 32(1) of the *Act* and ensure the floor to the rental unit is finished to a standard which makes the floor suitable for occupancy. This work must be completed by mutual agreement with the tenant as to an appropriate date not later than November 15, 2012.

I further Order that the landlords assist the tenants with the removal and storage of the tenants belongings from the rental unit while the work on the floor takes place.

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 02, 2012.

Residential Tenancy Branch