



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND OLC ERP RP RR FF

Preliminary Issues

Upon review of the Tenants' application for dispute resolution they confirmed that they were seeking monetary compensation for the reduced value of their tenancy as a result of recent floods. The Tenants noted their request in the Details of Dispute on their application form by writing that they were seeking \$300.00 for each month until the repairs are completed. Therefore, I find the Landlord was previously made aware of their request. Accordingly, I amend the application to include a request for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 64(3)(c) of the Act.

The Landlord's Agent affirmed that she did not receive copies of all of the Tenants' evidence. She noted that she did not receive letters that were previously written to the Landlord by the Tenants.

The Tenants affirmed that copies of all of their evidence were sent to the Landlord's corporate office by registered mail as supported by their registered mail receipt.

In cases where a corporate Landlord relies upon an agent to represent them during the hearing the corporate Landlord bears the burden to forward all evidence received to their agent. Based on the foregoing I find the Landlord was sent copies of all of the Tenants' evidence, in accordance with the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 26, 2012, by the Tenants to obtain the following Orders: a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; an Order to have the Landlord comply with the Act, regulation, or tenancy agreement; make emergency repairs for health or safety reasons; make repairs to the unit, site or property; An Order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the

hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

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 requested repairs been completed?
- 2) Should the Tenants be awarded monetary compensation?

Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: Canada Post receipts; a CD/DVD with photographs; the tenancy agreement; letters written to the Landlord Oct. 29, 2012, Nov. 3, 2012, Nov. 19, 2012, and Apr. 11, 2011; and an explanation of pictures and videos.

The Landlord submitted documentary evidence which included, among other things, copies of: their written statement with a chronological list of events; a note from the fire department; a list of dates worked at the rental unit by the Landlord's contractor; and a list of hours the contractor worked.

The following facts were not in dispute:

- April 2011 – a flood occurred where water was seeping into the Tenant's master bedroom and living room. After the Tenants wrote the Landlord requesting repairs the repairs were completed.
- October 13, 2012 – the unit flooded again causing water to seep into the master bedroom and living room. The Tenants reported the flood immediately and the Landlord contacted the repair contractors and began restoration work.
- November 18, 2012 – this was the fifth occurrence of water entering into the rental unit since October 13, 2012. The Landlord initiated repairs again which had been ongoing since October 14, 2012.
- December 4, 2012 – a smaller leak happened in the living room. The Landlord had the contractors attend the building again. The contractors expanded the trench outside the building and added additional sealant to the exterior of the building. This was the last time the building leaked.
- The trenches remain open with temporary panels covering them to ensure no further leaking is occurring in these areas.

The Tenants submitted that they have been very pleased with the manner in which the Landlord has initiated repairs each time the floods occurred; however, her response has not eliminated the amount of stress and inconvenienced they have been faced with. They stated that they were not able to use their bedroom or living room from October 13, 2012 to December 4, 2012 forcing them to sleep and eat in their four year old child's bedroom.

The Tenants argued that they have had to have fans running continuously which makes it difficult to sleep. They noted that they were delayed in moving back into their bedroom and living room until December 15, 2012, because the sealant gave off a very toxic smell which has caused them to have to keep the fans going longer.

The Tenants are seeking \$300.00 for each month they were inconvenienced due to this repair. They noted that they were paying rent for a two bedroom apartment but only had use of one bedroom and bathroom for the two months between October 12, 2012 and approximately December 15, 2012.

The Landlord confirmed that the repairs were on going as the contractors attempted to seal the areas where water was coming through. A trench was dug on the east side of the building which does not interfere with the Tenants' use of their patio which is located on the North side of the building. She did not dispute that it would be difficult living with the noise of the fans nor did she dispute that the sealant gave off a strong odour for three or four days after each application.

In closing the Landlord submitted that they did the best they could do by having the contractors attend to the problem as soon as possible and by bringing them back each time the problem occurred.

Analysis

I have carefully considered the aforementioned and on a balance of probabilities I find as follows:

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Landlord has complied with the Act, regulation and tenancy agreement by having the water leaks repaired in a timely manner. Therefore, I dismiss the Tenants' requests for an Order to have the Landlord comply with the Act, regulation or tenancy agreement and for Orders to have the Landlord make repairs and make emergency repairs for health or safety reasons.

Neither party disputed that water leaked into the rental unit from the exterior of the building or that the Landlord hired contractors to repair the leaks.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the landlord had breached this section of the *Act*. As a result, I dismiss this portion of the Tenants' application.

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 units 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.

I accept the Landlord's evidence and testimony that they took all reasonable steps to ensure the repairs would be completed as soon as possible. I also acknowledge that the Landlord understood that any delays in completing the work would inhibit the Tenants use and occupation of their rental unit.

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."

While I accept that the Landlord took action to enact the repairs as soon as possible, I find it undeniable that the Tenants suffered a loss of quiet enjoyment and a subsequent loss in the value of the tenancy by approximately 23.6% for the period between October 13, 2012 and December 15, 2012. As a result, I find the Tenants are entitled to compensation for that loss and I award them a monetary claim of **\$600.00** (2 x \$300.00).

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

Conclusion

The Tenants have been awarded a monetary claim of **\$650.00** (\$600.00 + \$50.00). The Tenants may deduct two equal amounts (\$325.00 x 2) from their future rent as full satisfaction of their claim.

For clarity, if the Tenants' rent remains at \$1,267.00 for February and March 2013 then they would deduct \$325.00 from each month as follows:

February 1, 2013 rent \$1,267.00 - \$325.00 = \$942.00 to be paid by Tenants

March 1, 2013 rent \$1,267.00 - \$325.00 = \$942.00 to be paid by Tenants

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: January 11, 2013.

Residential Tenancy Branch