



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for loss, to have the landlord make emergency repairs for damages, to have the landlord make repairs to the unit and to allow a tenant to reduce rent for repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?
Should the landlord be ordered to comply with the Act?
Should the landlord be ordered to make emergency repairs?
Should the tenant be allowed to reduce rent for repairs?

Background and Evidence

The parties agreed that the foundation of the building started leaking on November 2, 2012, into one of the bedrooms in the tenant's unit, and as of today's date the leak has not be fully resolved. However, the water leak has been isolated to a smaller area due to the work that has been completed on the foundation.

The tenant claims as follows:

a.	Loss of bedroom	\$300.00
b.	Increase Hydro \$3 to \$4 per day	\$100.00
c.	Loss of work and hassle for filing claim	\$100.00
	Total claimed per month (rent reduction)	\$500.00

The tenant testified due to the foundation leak in his bedroom he is unable to use the bedroom, as the carpet is pulled back and the room has a bad odour caused by the leak. The tenant stated he is currently sleeping on the couch in the common area, which is impacting the co-tenant. The tenant stated he seeks compensation at the rate of \$300.00 per month for the inconvenience.

The tenant testified that due to the leak he has had to use a fan in the bedroom and increase the heat in other rooms and this has caused his hydro consumption to increase significantly and seeks to be reimbursed three to four dollars per day.

The tenant testified that he seeks to be compensation for having to deal with the problem and the hassle of filing for dispute resolution and seeks compensation in the amount of \$100.00.

The tenant testified that he seeks an order for the landlord to use a different company to fix the foundation problem as he believes the company the landlord has hired is not qualified.

The landlord testified that the actual area affected by the leak is 2% of the living area the tenant rents and amount the tenant is seeking is unreasonable. The landlord stated the actual loss of value of the space is \$75.00.

The landlord testified the tenant has not supplied any documents to prove the cost of hydro has increased due to the water leak. The landlord stated hydro costs have increased because we are now into the winter months.

The landlord testified that the building is older and as soon as they become aware of the foundation leak, they have made every effort to minimize the leak. The landlord stated he hired a company to inspect the foundation and make repairs and on November 5, 2012, they attended the property.

The landlord testified they have made attempts to repair the foundation, and have had the foundation treated with sealant. However, due to the age of the building and the landscaping around the building, it has been difficult to isolate the leak, however, it has now been narrowed down to a smaller area. The landlord stated he has confidence in the company he has hired to resolve the foundation problem as he has used this company in the past.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenant has the burden of proof to prove a violation of the Act by the landlord and a corresponding loss.

The parties agreed that one of the bedrooms the tenant rents had a water leak coming through the foundation commencing November 2, 2012.

The evidence of the tenant was that he is unable to use the bedroom due to the water leak, which the carpet has been pulled partially back and that the room itself has bad smell caused by the water leak. The evidence of the tenant was the room cannot be used for the purposes it was rented and he is sleeping on the couch in the common area, which is impacting the co-tenant.

The evidence of both parties was there is still water leaking into the bedroom, however, it has now been isolated to the corner area.

Under the Act it is necessary to balance the tenant's rights to quiet enjoyment and with the landlord's right to maintain the premises, however a tenant may be entitled to reimburse for loss of use of a portion of the property even if the landlord has made every effort to minimize the loss. Temporary discomfort or inconvenience does not constitute a basis of a breach.

In the case, the foundation of an older building was discovered leaking on November 2, 2012, and on November 5, 2012, the landlord had the foundation inspected and repairs commenced. However, due to the age of the foundation and the landscaping around the foundation the leak has been difficult to isolate and as of today's hearing the leak has not been fully resolved, however, has been isolated to a smaller area.

While I accept the evidence of the landlord that they are making every effort to have the foundation leak resolved, the tenant has lost the use of a portion of the property for an extended period of time. Therefore, I find the tenant is entitled to compensation for that loss.

The tenant is seeking a rent reduction in the amount \$300.00 per month for the loss, however, I find the amount claimed to be high as the monthly rent is \$1,065.00. Therefore, I will allow a nominal award in the amount of \$175.00 for each month the tenant suffered the loss. The tenant is entitled to compensation for the loss from November 2, 2012 to January 31, 2013, in the amount of **\$525.00**.

The evidence of the tenant was that their hydro has significantly increased due to the water leak. The landlord disputes the tenants claim. The tenant has not submitted any documentary evidence to support their claim. As a result, I find in the tenant has failed to prove a loss exists. Therefore, I dismiss the tenant's claim for compensation for increase hydro cost without leave to reapply.

As the landlord is making reasonable effort to repair the foundation, I find it is not necessary at this time to allow the tenant to reduce rent on an ongoing basis. However, if the landlord does not have the water leak resolved the tenant is at liberty to reapply for further compensation.

As the landlord is making reasonable effort to have the foundation repaired, I find it is not necessary at this time to make a formal order for repairs. The landlord is entitled to use any company they consider to be qualified to make the repair.

The tenant is seeking compensation for loss work and the hassle of filing the claim. I find there is no provision under that Act that would allow the tenant to be granted compensation for preparing for or attending to a dispute resolution hearing. Therefore, the tenant's application for this claim is dismissed.

I find that the tenant has established a total monetary claim of **\$575.00** comprised of the above described amount and the \$50.00 fee paid for this application. The tenant is entitled to deduct the above amount from a future month rent payable in full satisfaction of the claim.

Conclusion

The tenant's application for monetary compensation is granted and may deduct the above amount from a future month rent payable in full satisfaction of the claim.

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 14, 2013.

Residential Tenancy Branch

