



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOVEREIGNTY HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, FF*

Introduction.

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss of use of a master suite bathroom while repairs were ongoing and for the filing fee.

The tenant states that she served the landlord with the notice of hearing, in person on November 28, 2012. The landlord responded by filing evidence to support his case but failed to attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Was the landlord negligent in responding to the water leak? Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on April 01, 2011. The rental unit consists of a unit located on the ninth floor of an apartment building. Rent is \$1,900.00 due on the first of each month.

The tenant stated that sometime around March 16, 2012, she noticed a puddle of water accumulating in the centre of the bathroom, after she showered. This had never occurred before and she put it down to not having drawn the shower curtain properly. The tenant testified that she noticed this accumulation of water a few times more but did not think much of it and did not report it to the landlord. On March 27, 2012, the building manager contacted her to investigate complaints of water leaking into the unit directly below the tenant.

It was determined that the source of the leak was from the master bathroom and the building manager requested the tenant to use the other bathroom until the issue was resolved. The tenant stated that starting April 02, 2012, she was contacted regularly by contractors and workers to fix the problem. The work was finally completed on May 18, 2012.

The landlord stated in his written submission that the work took longer than usual because the tenant requested that workers attend first thing in the morning for a couple of hours, to enable the tenant to go to work. For personal reasons, the tenant also refused to let the workers conduct repair work inside the unit, in her absence.

The tenant agreed that she had made this request and for the period of April 09 to April 12, workers attended the unit for short periods of 1.5 hours to 2.5 hours. During this time, the work consisted mainly of opening the drywall, installing fans and monitoring the drying out of the affected areas.

On May 07, 2012 the structural phase of the work started and went on until May 10, 2012. The final clean up was done on May 18, 2012.

The tenant made a written request to the landlord for compensation in the amount of \$2,374.28 for the inconvenience she suffered during the period of the work. The tenant based the quantum of her claim on the number of days that she did not have complete use of the master bathroom, the presence of large machines inside the rental unit, having to contact someone about a matter related to the issue and for visits by workers to the rental unit during the period that the repairs were ongoing. The tenant stated that she agreed to settle her claim for \$1,900.00.

The landlord responded by making an offer of \$687.50. He explained how he arrived at this amount by providing the tenant with a breakdown based on the square footage of the area that was not available for the use of the tenant (38.35 sq. ft.) in comparison to the total square footage of the rental unit (855 sq. ft.). Even though the master bathroom was unavailable for only portions of the total time, the landlord provided compensation for the entire time of the repairs. This worked out to \$137.50. The landlord added an additional \$550.00 for the inconvenience endured by the tenant during the repairs for a total of \$687.50.

The tenant refused to accept this offer and proceeded to apply for dispute resolution.

Analysis

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the tenant did not inform the landlord of the problem in a timely manner. The landlord contacted the tenant when he received complaints from the occupant of the unit below. I find that had the tenant contacted the landlord as soon as she noticed the accumulation of water in the bathroom, the resulting damage would have been less extensive and the repairs would have taken less time. In addition, I find that the landlord had limited time per day to carry out the repairs, in order to accommodate the tenant's request.

I find that the landlord fulfilled his obligations by acting on the complaint he received in a timely manner and he also made the necessary arrangements to repair the damage and restore services to the tenant, in a way that accommodated the tenant's needs.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In this case, the landlord was simply carrying out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However in order to carry out this duty, the landlord inconvenienced the tenant by asking her to use a guest bathroom, by placing machinery inside the unit that restricted access to the bathroom and closet and by having workers in and out of the rental unit regularly for approximately 52 days. I find that this inconvenience to the tenant resulted in a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. 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.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work and did lose the use of the master washroom for some days over a period of 52 days. Therefore I find that the tenant is entitled to compensation. I must now determine the quantum of the damages that the tenant is entitled to.

I find that the explanation offered by the landlord for the basis of his offer of compensation accurately reflects the square footage of space that was not available for use by the tenant. The landlord prorated the rent for this space and offered an additional amount of \$550.00 as compensation for the inconvenience endured by the tenant. I find that the landlord's offer is reasonable and adequate. Accordingly, I award the tenant compensation in the total amount of 687.50.

This offer was made to the tenant prior to her application for dispute resolution. The tenant chose to reject this offer. Since the tenant has not proven an entitlement to compensation in addition to the landlord's offer, she must bear the cost of filing her application.

Conclusion

I grant the tenant compensation in the amount of \$687.50. The tenant may make a onetime deduction of this amount from a future rent.

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 27, 2013

Residential Tenancy Branch

