



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ren He Investments Limited & Optimum Realty Inc. Property Mgmt.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNSD, O

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for a monetary order for \$9805.80 and a request for recovery of the \$100.00 filing fee.

Background and Evidence

The applicant testified that:

- This tenancy began on June 1, 2007 and she paid a combined security/key deposit of \$587.50 on April 16, 2007.
- At the beginning of the tenancy her rent was \$975.00 per month, however at the end of the tenancy the rent had increased to \$1105.00 per month.

- On July 20, 2012, following a rainstorm, water started leaking through the ceiling of the bedroom in her rental unit and she immediately reported the leak to the landlords.
- The landlords came to the apartment but were unable to find the source of the leak, and asked that I keep the containers in place that I had catching the leaking water.
- By July 23, 2012 a foul musty/mildew odor had developed in the bedroom and seemed to be coming from the ceiling area through which the water had been leaking.
- As a result of the strong odor and the ongoing leak I was forced to move out of the bedroom and into the living room, including my bed and all my clothes etc..
- Rather than offering to fix the leak the landlord suggested that I should find someplace else to live.
- I did not want to vacate especially since I was going on vacation on August 24, 2012 through September 17, 2012 and this would give me very little time to pack and move.
- On July 31, 2012 I was served with a two month notice to end tenancy for landlord use with an end of tenancy date of September 30, 2012. The reason checked off on the notice was that the landlord was going to demolish or repair the unit in a manner that required the unit to be vacant, and the landlord informed me that the rental unit needed to be vacant in order for them to repair and replace the roof on the building.
- The landlord failed to the repair the leak during the remainder of the tenancy and instead stapled plastic up to redirect the water out of bedroom window with a makeshift hose contraption.
- The water continued to leak through the ceiling for the remainder of the tenancy, and the strong musty/mildew smell remained in the bedroom and spread throughout the rental unit.

- Because the smell got so strong, and because of the health risks associated with mold I was forced to stay with friends for approximately the last eight weeks of my tenancy.
- I vacated the rental unit on September 29, 2012.
- A final inspection and walk-through was done on September 29, 2012 and on the inspection report it stated “No Damage” and the landlord stated that I would be receiving my entire deposit back.
- The landlords later stated that I was responsible for painting the rental unit and therefore deducted \$380.00 plus GST and only returned \$173.55 of my combined security/key deposit. I have not cashed this cheque.
- I never agreed to any deductions from my security deposit, and I do not believe I can be held responsible for repainting this unit.
- Being forced to move by the landlord has been an extreme financial burden, and I believe that the notice to end tenancy was a wrongful eviction, as I do not believe that vacant possession was required to do the roof repair.

The applicant is therefore requesting compensation from the landlord as follows:

75% rent reduction for loss of use of the majority of the rental unit due to the leak	\$1978.30
Return of security/key deposit double for failing to comply with the Residential Tenancy Act	\$1075.00
Moving costs	\$442.50
Increased rent and parking at her new rental unit for the next three years	\$3240.00
Claim for compensation for September 2012 rent at her new apartment.	\$760.00
Claim for double the monthly rent for wrongful eviction.	\$2210.00
Filing fee	\$100.00
Total	\$9805.80

The respondents testified that:

- We disagree with the tenants claim for a rent reduction for loss of use, as we believe we dealt with this matter promptly and reasonably.
- Immediately after hearing from the tenant about the leak we sent workers with tools, buckets, and a vacuum to clean the unit and dry the carpet.
- The next day we sent a roof repair man to patch up cracks in the asphalt above her bedroom, however it was determined that the whole roof needed to be replaced and this could not be done until the weather improved.
- On July 23, 2012 and July 25, 2012 we sent workers again to deal with leaks in the areas around her bedroom.
- On July 27, 2012 we reported the serious problem to the building owner and on July 29, 2012 the owner requested we replace the whole building roof.
- A building contractor was confirmed, and then on July 31, 2012 termination notices were given to the tenants of unit 402, and unit 404 as we believed vacant possession was needed to do this work.
- On August 14, 2012 we e-mail the tenant stating we are willing to compensate \$150.36 for the tenants inconvenience in loss of use of the bedroom, and we feel this offer was reasonable.
- As far as the security deposit is concerned, the move out inspection report does state no damage, however when the tenant moved in it was clearly indicated that she would repaint the premises herself before moving out.
- We gave her time to repaint the unit however she failed to do so and therefore a contractor was hired and the cost was deducted from her security deposit.
- The remainder of the tenant security deposit plus her key deposit were returned in full.
- We believe the tenants claim for moving costs is also totally unreasonable as she was already given one month free rent as compensation for having received the

two month notice to end tenancy. We believe this compensation is meant to assist the tenant in the cost of moving.

- The tenants claim for increased rent and parking for three years is also totally unacceptable. We gave the tenant a two-month notice to end tenancy which she did not dispute, and she vacated at the end of that two months. There is no requirement under the Residential Tenancy Act to compensate the tenant for any increased rent in her new rental unit.
- We also find the claim for rent at the new rental unit for the month of September 2012 to also be totally unreasonable. The tenant did not have to be out of the rental unit until the end of September 2012 and it was her choice to rent another unit for the month of September 2012.
- We also do not believe the tenant has a valid claim for compensation under section 51 of the residential tenancy act, because we fully complied with the reasons given for ending the tenancy. The tenancy was ended so that the building could have a new roof installed, and that roof was completed by October 31, 2012, and even the interior repair work was completed by 30 November 2012.
- We followed the Residential Tenancy Act when giving the two-month Notice to End Tenancy, and if that tenant felt that our reasons for giving the notice were not valid she could have disputed the notice, however she did not and therefore we believe that the tenant does not have the right to these numerous claims for compensation.

Analysis

Loss of use

It is my finding that the tenant has shown that she had a significant loss of use and enjoyment of the rental unit due to the leak in the bedroom.

The ceiling in this rental unit started leaking in July of 2012, and although the landlord did attempt to patch the roof, and put in the system to catch the leaking water and channel it outside, I find it most likely that the buildup of moisture in the ceiling of the rental unit would have made the area difficult if not impossible to live in due to the smell and possible mold contamination.

I agree with the landlord that it was probably best to wait and replace the whole roof when the weather was better, however that does not mean that the tenant should continue to pay full rent when she does not have full use of the rental unit.

I am not however willing to allow a reduction of 75% as I believe that to be excessive. I will allow reduction of 50% for loss of use and enjoyment.

I therefore allow a reduction of \$213.87 for the 12 days in July 2012, a reduction of \$552.50 for the month of August 2012, and reduction of \$552.50 for the month of September 2012 for a total of \$1318.87.

Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants full security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on September 29, 2012 and the landlord had a forwarding address in writing by September 29, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid deposits totaling \$587.50, and therefore the landlord must pay \$1175.00 to the tenant plus interest of \$15.18 for a total of \$1190.80.

The landlord did return a total of \$173.55 to the tenant in October of 2012, however the tenant has not cash that cheque, and it is likely stale dated by now and therefore I will issue an order for the full amount. If it is found that the tenant has cashed the cheque however, the landlords may deduct \$173.55 from the final order.

Moving costs, compensation for increased rent/parking, compensation for September 2012 rent in new apartment, and damages for wrongful of that action.

The landlord serve the tenant with a two-month notice to end tenancy for landlord use stating that vacant possession was needed to renovate the unit, and I accept the landlord's testimony that it was their belief that vacant possession was required.

Further if the tenant felt that vacant possession was not required she had a full 15 days after receiving the notice in which to file a dispute of the notice, however she failed to do so. The tenant is therefore conclusively presumed to have accepted the end of the tenancy.

The tenant was given her last month rent free, as the required compensation for a two-month Notice to End Tenancy and there is nothing in the Act that would require the landlord to pay further compensation for moving expenses, increased rent, or rent for a new rental unit.

The only other compensation required by the Act is if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice however in this case the landlord

did comply with the reasons given for ending the tenancy and replaced the roof promptly, and within a reasonable timeframe.

I therefore deny the tenants claims for moving costs, compensation for increased rent/parking, compensation for September 2012 rent in a new apartment, and damages for alleged wrongful eviction.

Filing fee

I will allow one half the applicants claim for recovery of the filing fee, because the amount of the claim that I have allowed is below the \$5000.00 level at which the fee doubles from \$50.00 to \$100.00.

Therefore the total amount of the applicant's claim that I have allowed is as follows:

Compensation for loss of use	\$1318.87
Security/key deposit doubled	\$1190.80
1/2 Filing fee	\$50.00
Total	\$2559.67

Conclusion

I have issued an order for the respondents to pay \$2559.67 to the applicant.

The remainder of the applicants claim is dismissed without leave to reapply.

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 22, 2013

Residential Tenancy Branch

