



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC and RR

Introduction

This hearing was convened on an application by the tenants seeking rent abatement for loss of quiet enjoyment and loss of use of facilities for a period during which the rental unit was undergoing repairs and restoration following a sewerage back up.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for return of a portion of their rent and in what amount?

Background and Evidence

This tenancy in a single family dwelling began on September 1, 1995. Rent is \$1,930 per month and the landlord holds a security deposit of \$800 paid at the beginning of the tenancy.

During the hearing, the parties concurred that the sewer had backed up into the rental unit late on the evening of September 21, 2012 and that restoration work had been substantially completed on or about December 27, 2012.

The tenants gave evidence that throughout the work, they had requested a rent reduction in compensation for their loss of use of approximately one-third of the rental unit including one washroom.

The landlord's agent had concurred that the tenants were entitled to some relief but asked that reimbursement be postponed until the landlord's insurance claim had been settled and had advised the tenants that the insurance company had placed the tenants' entitlement at 25 percent of the rent paid during the restoration period.

The tenants submitted photographic evidence illustrating that the home was in a state of disarray during the restoration and the tenants were disturbed by construction noise, drying fans and the presence of workers.. There was a delay in beginning the project pending authorization by the insurance company and much of the work was done on weekends.

The tenants claim \$225 for the period from September 21 to September 30, 2013 during which time they dealt with the initial sewage intrusion in an effort to minimize the damage to the rental building and ruined a steam cleaner in the process. For the balance, they claim \$750 per month, approximately 38 percent, rent abatement.

Analysis

Section 27(2)(b) of the *Act* make provision for a rent reduction in circumstances in which tenants lose use of facilities in the rental unit. Section 28 of the *Act* ensures tenants' right to quiet enjoyment including freedom from unreasonable disturbance.

It is not necessary that there be any negligence on the part of the landlord in order for tenants to succeed on claims for these losses; they must simply prove that the loss occurred.

While I understand that the landlord's insurer may set compensation at 25 percent of the rent, I find that the tenants' degree of loss in the present matter is more fairly and accurately reflected in the tenants claims, and I set the award as follows:

September 21 to September 30, 2012 rent abatement	\$ 225.00
October 2012 rent abatement	750.00
November rent abatement	750.00
December 1 to December 27, 2012 rent abatement (27/31 x \$750)	653.23
TOTAL	\$2,378.23

Conclusion

As authorized under section 72 of the *Act*, having found that the landlord owes the tenants **\$2,378.23**, I hereby order that the tenants may retain the amount owed from payment of 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 19, 2013

Residential Tenancy Branch

