



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0761500 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, ERP, RP, RR

Introduction

This hearing was originally scheduled for March 12, 2013 to deal with a tenant's application for Orders for repairs and emergency repairs; authorization to reduce rent; and a Monetary Order for the cost of emergency repairs and damage or loss under the Act, regulations or tenancy agreement. Prior to the hearing, the landlord submitted documents to the Branch indicating he would be seeking an adjournment as he had booked a flight for the same time as the hearing prior to the tenant filing of this Application for Dispute Resolution. At the hearing scheduled for March 12, 2013 an agent appeared on behalf of the landlord and formally requested an adjournment.

The tenant expressed his displeasure about the adjournment request and indicated he was concerned about paying rent for April 2013 since he had spent money on emergency repairs. I granted the adjournment and set a reconvene date of March 28, 2013 so as to address the tenant's concerns.

Both parties appeared at the reconvened hearing of March 28, 2013. Both parties had an opportunity to be heard, to make relevant submissions and to respond to submissions of the other party.

On a procedural note, I found the tenant to be highly disruptive during the hearing by way of frequent interruptions and his argumentative stance toward most statements made by the landlord or myself despite giving the tenant several warnings to cease such conduct. Finally, the tenant had to be given explicit instructions to cease talking until I had a question for him. The tenant appeared to understand the explicit instructions and largely complied with them in the latter part of the hearing.

Issue(s) to be Decided

1. Is it necessary to issue Orders to the landlord for repairs or emergency repairs?
2. Is the tenant authorized to reduce rent payable?

3. Is the tenant entitled to a Monetary Order for emergency repairs or damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced October 1, 2012 and the tenant pays rent of \$850.00 per month. The rental unit is a one bedroom unit located on the ground floor. The tenant occupies the rental unit himself with weekend visits from his young children. Prior to March 1, 2013 there had been no known issues with water leaking into the rental unit through the foundation.

On March 1, 2013 the tenant noticed an area of wet carpeting in his living room and called the landlord. The landlord attended the rental unit to investigate within approximately 15 minutes and observed a wet area of approximately 2' x 2' in area in the corner of the living room. Very shortly after the landlord left the unit the tenant proceeded to file this Application for Dispute Resolution and sought crisis funding from the Ministry to stay in a motel with his children for three nights.

The tenant submitted that water continued to seep into the rental unit after the landlord left as it was raining heavily. The tenant determined he was unable to occupy the rental unit March 1 – 3, 2013 as he had his children that weekend and during that time the living room carpeting was torn up and a fan was brought in to dry the area. Accordingly, the tenant proceeded to obtain crisis funding which paid for a motel stay for three nights. On March 4, 2013 the tenant returned to stay at the rental unit, although he was limited to using only the bedroom, bathroom and kitchen. The weekend of March 9 and 10, 2013 he stayed with his parents in their vacation accommodation since they were visiting from Ontario. The carpets were installed on March 11, 2013 and he returned to the rental unit.

The tenant acknowledged that he does not carry tenant's insurance. The tenant was of the position that the landlord is responsible for the tenant's losses associated to the water infiltration as it is the landlord's property that leaked. The tenant requested compensation of \$800.00 in making this application. He provided a breakdown of that amount as follows:

- \$ 256.50 for the three day motel stay;
- \$ 235.81 to purchase food and incidentals while staying in the motel;
- \$150.00 for the "extra occupant" charge his parents paid for the tenant to stay with them in their vacation accommodation the weekend of March 9 and 10, 2013; and,

- The remainder for loss of use of the rental unit and damage to his personal property.

The tenant provided a copy of the motel statement as evidence along with unidentified transactions on an unidentified bank account statement. The tenant explained that the bank transactions were made using his girlfriend's account and that she loaned him this money. The tenant explained that his parents came to visit from Ontario while his unit was undergoing repairs and that they paid an "extra occupant" charge for him and his children to stay with them at their vacation accommodation during the weekend of March 9 and 10, 2013. The tenant submitted that he could obtain a receipt to show his parents paid for such.

The tenant submitted that the repairs are largely complete except that the living room carpet smells and that some of the edges of the carpet tiles are sticking up. The landlord suggested the carpets smell because of the tenant's lack of house cleaning efforts in general. The landlord was agreeable to sending his handyman to investigate the carpet tile edges and re-glue them as necessary.

The landlord submitted that when he attended the unit the wet carpeting was approximately 2' x 2' in area but when the handyman he hired attended the unit shortly afterwards the wet area had increased significantly despite the fact the rain had stopped. The handyman proceeded to pull the carpet tiles up, rented a large fan, snaked the outside drain, and put a waterproofing compound in an area where the foundation wall and patio meet. The carpet installer replaced the carpet tiles as soon as he could on March 11, 2013.

The landlord objected to the tenant's monetary claims as the tenant went to stay at a motel without first notifying the landlord the unit was uninhabitable or otherwise requesting the landlord provide him with alternative accommodation. The landlord submitted that he has a working relationship with a hotel that would charge him approximately \$50.00 per night.

The landlord submitted that upon learning of the water infiltration he took reasonable steps to stop the ingress and repair the unit in a timely manner. The landlord suspects this is scam the tenant is running given the mysterious expansion of the saturated area; the nearly immediate request for crisis funding and claim for compensation; and, a previous issue concerning a lost rent payment.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Monetary claims and rent abatement

I was not provided evidence the tenant made any emergency repairs to the property, as defined by the Act, and I dismiss his claim for compensation for such.

With respect to the tenant's claim for compensation for damage or loss under the Act, regulations or tenancy agreement, I find the tenant entitled to compensation of \$160.00 as explained below.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law and is suitable for occupation.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[my emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant to the tenant's personal property and costs for temporary relocation. A landlord does not become a tenant's personal insurer when a tenant does not carry tenant's insurance. Damage to a tenant's property or other

losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

In light of the above, it is upon the tenant to show that the water infiltration in the rental unit was a result of the landlord's negligence or that the landlord was negligent in dealing with the leak once aware of it. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenant has shown that the landlord acted unreasonably in addressing the water infiltration problem or the likelihood that water would infiltrate the residential property.

Considering the landlord had only recently acquired the property and the tenant's testimony that water had not previously seeped into the unit, I am satisfied the landlord did not have an expectation that water infiltration was imminent. Upon consideration that the landlord had the carpets removed, the unit dried, had the exterior drain cleared and the foundation wall patched shortly after the tenant reported the water infiltration I am satisfied the landlord took reasonable steps to remedy the problem in a timely manner. Therefore, I am satisfied the landlord was not negligent and the tenant is not entitled to compensation for under the law of negligence.

Residential Tenancy Policy Guideline 16 also provides for compensation where there has been a breach of contract. It states, in part:

Breach of Contract

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

[my emphasis added]

Based upon the undisputed evidence presented to me, I am satisfied that a large portion of the living room carpeting ultimately ended up wet and in need of removal, drying, and reinstallation. Although I was provided opposing positions as to how or why the area of wet carpeting grew to a much larger area after the landlord inspected the unit, I find the landlord's suspicions are not sufficient for me to conclude the tenant is responsible for purposely bringing more water to the living room carpet. Therefore, I accept that the living room was largely unusable from March 1, 2013 through March 10, 2013 and there was a loss of use for that period for which the tenant is entitled to rent abatement. I find the unit was returned to a largely restored condition as of March 11, 2013 and I do not provide rent abatement for that day. Further, I am satisfied that the presence of the workmen and the drying fan made the rental unit uninhabitable during the weekend of March 1 – 3, 2013 as evidenced by the motel receipt.

In light of the above, I find the tenant entitled to rent abatement for loss of use of the premises of \$160.00 calculated as follows:

March 1 – 3, 2013 x 100% x daily rent of \$27.42 = \$82.26

March 4 – 10, 2013 x 40% x daily rent of \$27.42 = \$76.78

Total = \$159.04 rounded up to \$160.00

While the tenant may have stayed with his parents at their vacation accommodation on the weekend of March 9 and 10th, 2013 I find insufficient evidence that the decision to do so was attributable to the condition of the rental unit as opposed to a choice to visit with his parents especially when I consider he had been residing in the unit in the days prior. Therefore, I limit the rent abatement to 40% for that weekend.

As stated orally during the hearing, the tenant is authorized to withhold \$160.00 from rent otherwise payable to the landlord in satisfaction of the above award.

Repair orders

Having heard from the parties, I am satisfied there are no emergency repairs that are currently outstanding and I make no orders for such.

Having heard the tenant's complaint that carpet edges are sticking up, I find it appropriate to ORDER the landlord to investigate the condition of the carpet edges and have any edges sticking up reattached to the floor as necessary. The landlord has one week to satisfy this order.

As the living room carpets have been subject to water infiltration, I ORDER the landlord to have the living room carpets shampooed and any appropriate anti-fungal or anti-bacterial product applied to them. The landlord has two weeks to satisfy this order.

Other orders

Having heard the tenant did not make any attempt to notify the landlord that the rental unit had become uninhabitable after the landlord left the unit and proceeded to attend the offices of the Ministry and the Residential Tenancy Branch to seek funding and compensation =, I find it appropriate to issue the following **ORDER to the TENANT**:

Prior to filing any future Application for Dispute Resolution against the landlord, the tenant MUST give the landlord written notification of the landlord's breach of the Act, regulations or tenancy agreement, the remedy sought by the tenant, and a reasonable opportunity for the landlord to respond to the complaint.

Conclusion

The tenant has been awarded a rent abatement of \$160.00 and has been authorized to withhold that amount from rent otherwise payable to the landlord. The landlord has been ordered to investigate and make necessary repairs to the carpet edges and to clean the living room carpet. The tenant has been given an order with respect to filing any future Application for Dispute Resolution against the landlord.

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: April 05, 2013

Residential Tenancy Branch