



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter
DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR, FF, O

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to comply with the Act, regulation or tenancy agreement; compelling the landlord to make repairs; permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; awarding the tenant a monetary order for damage or loss under Act, regulation or tenancy agreement and recovery of the filing fee. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Should an order be made compelling the landlord to comply with the Act, regulation or tenancy agreement and, if so, upon what terms?
- Should a repair order be made and, if so, on what terms/
- Should the tenant be granted a monetary order and, if so, in what amount?

Background and Evidence

The tenant has lived in this subsidized housing unit for more than ten years. The landlord is a non-profit housing society. The market rent for this unit is \$750.00. The tenant pays \$320.00 per month, 30% of his income. The rental unit itself is a bachelor suite.

On June 13, 2013, there was a fire in the unit above the tenant's. As a result of the firefighters' efforts there was water damage to the tenant's unit as well as the units above and below him. The water damage affected the tenant's bathroom, adjoining closet and hallway.

The landlord had a restoration company in within a very short time. They opened up the drywall, removed the wet flooring, and installed dryers. The dryers worked non-stop until June 17. The tenant said it was a total of 85 hours. The tenant agreed that these

measures were necessary to prevent the development of mold. Although the unit was very noisy during this time the tenant stayed in his unit because he did not have any alternatives.

The parties have had a previous dispute and relations between them appear to be strained.

By July 23 the tenant had become frustrated with what he perceived as the lack of action on the repairs to his unit and the lack of communication from the landlord so he filed this application for dispute resolution.

The landlord testified that they made an insurance claim and the repair process was managed and controlled by the insurance adjuster. The adjuster put out the scope of work and obtained tenders from several companies before awarding the contract. Work on all three damaged suites started mid-July and the work in the tenant's unit was completed by August 13. The tenant expressed satisfaction with the finished result.

The tenant expressed concern about possible asbestos contamination. He acknowledged that asbestos does not pose any danger if left undisturbed. The tenant took one drywall sample to a lab to be tested. He says the sample was taken from his closet and bathroom. The lab report says that the drywall sample was found to contain 1 – 5% chrysotile asbestos was found in a grey vinyl material but not in the white mud compound, the paper or the gypsum. The tenant was not able to provide any information about the meaning of the test nor was any additional information provided by the lab. The tenant expressed concern that when the drywall was opened up and the blowers were operating that there was asbestos in the drywall dust that was blown into the unit and this asbestos may be harmful to him.

The landlord testified that prior to the scope of work being put out asbestos testing was done and a small amount of asbestos was found in the drywall tape and in the old floor tiles. Treatment of the asbestos was included in the scope of work. The adjuster has advised the landlord that the asbestos has been properly treated in this unit.

The tenant asks for compensation for the disruption suffered during the repairs, for the landlord not providing him with alternative accommodation, and for the costs of preparing and serving his evidence.

The tenant does not have tenant insurance.

Analysis

As the repairs have been completed no repair order is required.

Where a rental unit is damaged by an unforeseen event, such as fire, flooding or pest infestation it is up to the landlord to repair the rental unit. Tenant's insurance generally covers the damage or loss a tenant may incur as a result of an unforeseen event.

Damage to a tenant's property or other losses including the cost of alternate accommodation, but not the loss of use of all or a portion of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

The event that caused the damage to this rental unit was unforeseen. I am satisfied on the evidence that the landlord acted promptly and responsibly once the damage was incurred. Once the insurance company takes over the repairs a landlord has no control over the process or the timing of the repairs. However, in this case, the insurance company had the tenant's unit repaired within a reasonable period of time.

There is no evidence on which I could find that the asbestos in this unit was not properly handled or that the tenant's health was put at risk.

While the dryers were operating this unit was not really habitable. I find that the tenant did lose use of the rental unit for the four days the blowers were operating. I award the tenant \$42.68, calculated at a daily rental rate of \$10.67 X 4 days, for the reduction in value of the tenancy. loss of use of the rental unit. Once the dryers were removed the unit was functional so no award will be made for the period after June 17.

There is no evidence that the landlord has not complied with the Act, regulation or tenancy agreement. Accordingly, no order will be made.

The *Residential Tenancy Act* does not give an arbitrator the authority to award the costs of preparing, serving or filing evidence to any party so the tenant's claim for photographs, postage, etc. is dismissed.

The tenant asked for reimbursement of the fee paid to file this application. However, he did not have to pay a filing fee so that claim is dismissed.

Conclusion

The tenant has been awarded a monetary order in the amount of \$42.68. Pursuant to section 72 of the *Residential Tenancy Act* this amount may be deducted from the next rent payment due to 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: September 17, 2013

Residential Tenancy Branch

