



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72; and
- other remedies, identified in his application as a conversion of this fixed term tenancy to a periodic (month-to-month) tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on November 1, 2013. I am satisfied that tenant served the hearing package to the landlord and that the parties have exchanged their written evidence to one another in accordance with the *Act*.

During the course of the hearing, it became apparent that I did not have four pages of evidence provided by the landlord to the Residential Tenancy Branch (the RTB) and the tenant. The landlord agreed to fax these pages to the RTB later that afternoon. I received that missing written evidence from the landlord by fax a few hours later, and have included that evidence in my consideration of the tenant's application.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses in the value of his tenancy arising out of repairs conducted by the landlord while this tenancy was in place? Is the tenant entitled to recover the filing fee for this application from the landlord? Should any order be issued to convert this tenancy from a fixed term to a periodic tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails and text messages, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

According to the terms of the one-year fixed term Residential Tenancy Agreement (the Agreement) between the parties, this tenancy was to begin on August 1, 2013. The parties agreed that the tenant and co-tenant moved in slightly before the tenancy was to begin. Monthly rent is set at \$1,450.00, payable in advance on the first of each month. The landlord continues to hold the \$725.00 security deposit paid on July 20, 2013.

The tenant's claim for a monetary award of \$1,618.20 included a request for a loss in the value of this tenancy for the 38 day period from August 28, 2013 until October 4, 2013, while repairs were underway as a result of a flood that occurred on August 28, 2013. The tenant requested a 70% reduction in his rent for this period, totalling \$1,244.19, and a 70% reduction in the hydro costs for this period, totalling \$54.01. The tenant's application also requested a monetary award of \$320.00 to compensate him and the co-tenant for each of their work for 8 hours at a rate of \$20.00 per hour to clean the rental unit after concrete dust and grout was spread throughout the rental unit by those conducting the repairs to this rental unit.

In their written, photographic and oral evidence, the parties and their witnesses presented very different accounts as to the circumstances that led to the flooding incident of August 28, 2013.

The tenant testified that the building housing this strata unit is "quite old" estimating that it was built in 1987 or 1988. He said that the water tap in the bathroom of this rental unit was turned off when repairs to the plumbing system in this building were undertaken on August 28, 2013. He and the co-tenant also stated that they had brought a concern about a clogged drain to the landlord's attention earlier that morning. When the water in the building was turned back on, this led to major flooding coming from this rental suite. The co-tenant rushed up to the rental unit with the building manager when the building manager told him that residents in the suites below this rental unit were complaining that water was leaking from the rental unit into their suites.

In the repairs that became necessary as a result of this flooding incident, the tenant maintained that he and the co-tenant experienced significant loss in their quiet enjoyment of the premises and the value of their tenancy. The tenant described this as 38 days of having to live through extensive repairs. At times the bathroom was reduced

to bare concrete floors and the tenants lost use of their bathroom vanity. The tenant testified that tiles were mixed in the kitchen sink and that, despite some measures taken to do the tile cutting on the balcony, there was quick-drying concrete dust over everything. This grout and concrete dust required the tenants to each spend an entire day clearing the dust from everything in the rental unit, including the sink, dishes and all surfaces. The tenant provided photographs which he testified were taken at 8:34 p.m. on October 4, 2013, and at 10:00 a.m. on October 5, 2013.

The tenant also maintained that dryers were left on for extensive periods of time resulting in a much higher hydro bill than would have been normal for these months. He supplied copies of hydro bills and invoices.

The landlord provided a very different account of this matter. He maintained that the building manager and the plumber who came to the rental unit found that the tap in the tenant's bathroom must have been left open to cause the kind of flooding damage that occurred over this short period of time. He rejected the tenant's claim that this flooding must have resulted from leaks in the taps or from a clogged drain. The landlord entered written evidence from the plumbing company and maintained that the plumber found little evidence of any serious clogging to the drain that could have caused this type of damage. He said that he was told that the water in the bathroom was very hot, an indication that the tenants left their hot water tap open while the repairs were occurring.

The landlord rejected the tenant's claim that dryers were running frequently, stating that dehumidifiers were used for approximately three days, primarily when the tenants were out of town one weekend. The landlord claimed that the level of disruption alleged by the tenant and co-tenant was grossly exaggerated. He gave undisputed sworn testimony that the toilet worked throughout the repair process except for one day. He also testified that the vanity was only out of commission for approximately three days. The tenant subsequently revised his testimony regarding the vanity, stating that it was not working for about two weeks.

The landlord said that the tenants ended up with a much improved bathroom as a result of the repairs undertaken. He said that most of the repairs were covered by his insurers, but for the \$500.00 deductible, and a portion of a bill that remains in dispute with the insurers of the strata complex. Since two separate insurance companies were involved with two sets of insurance adjusters, he agreed that the repair process was somewhat more complex. However, he said that he has not attempted to recover any of the repair costs from the tenant(s), even though he believes that they left a hot water tap on in the bathroom which caused this flooding. The landlord also testified that he visited the rental unit on the day that the tiles were cut and had the restoration company

bring cleaners in to make sure that there was no mess after their work. He testified that he inspected the rental unit after the cleaning was done and found the premises to be free of dust and appropriately cleaned.

The landlord's witness, the building manager, confirmed that he wrote an email about the August 28, 2013 flooding incident, entered into written evidence by the landlord and attributed to him. He said that this document accurately reflected his observations on the day of the flooding incident and the information provided to him by the plumber who attended that day. This email reads in part as follows:

*The water was shut off in the building due to a minor leak in another unit... When the water was turned back on, approximately 90 minutes later, I noticed water coming through the ceiling on the bottom floor next to my office. I immediately checked unit#*** and realized the water was coming from #(the tenant's rental unit). I called (the plumbers) back to the site....(After entering the rental unit) The floors in the bathroom and the hallway were flooded. It wasn't immediately apparent what caused the leak but the sink and the countertops surrounding it were very hot and the bathroom was very humid. In addition, the water in the toilet tank was very warm. The plumber's opinion was that there weren't any broken pipes that caused the leak and we decided to open the water for the entire building...*

Since the tenant said that the bathroom sink was partially blocked in the morning the plumber ran a snake through it and found very little hair/debris. The plumber's opinion was that the hot water tap must have been left on when the main water supply was shut off and this is the only plausible reason for a flood causing this much damage.

At the hearing, the building manager confirmed that there was hot water in the toilet tank and the bathroom was very hot and humid when he entered it on the day of the flooding incident. He gave sworn oral testimony that the plumber who attended that day told him that it was not possible for this amount of hot water to have come from anything but an open tap in the tenant's bathroom.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 32 of the *Act* places a responsibility on a landlord to maintain rental premises in an adequate state of decoration and repair. Based on a balance of probabilities, I find that the tenant has failed to demonstrate that the landlord is in contravention of any of the responsibilities placed on him by section 32 of the *Act*. In fact, based on the evidence before me, and particularly the email evidence and sworn testimony of the building manager, I find it more likely that the tenant(s) failed to comply with the following provisions of section 32(3) of the *Act* than the landlord being responsible to repair this damage under section 32(1) of the *Act*.

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant...

However, I am also mindful that section 32(4) of the *Act* establishes that a tenant is not held responsible for damage that results for reasonable wear and tear, which remains somewhat of a possibility, although unlikely in this case given the timing of this incident and the building manager's evidence.

Notwithstanding the reason for the repairs, section 28 of the *Act* does entitle a tenant to quiet enjoyment of the premises which includes, but is not limited to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];...

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

On a balance of probabilities, I find that the duration of the repair process likely did reduce the value of this tenancy to a certain extent. However, based on the evidence before me, I am not satisfied that this disruption was nearly as extensive as the tenant and co-tenant have claimed, nor did it last as long as they maintained. I find that the tenant's eligibility to a reduction in rent is limited to a one-month period, as it would be

unreasonable to have expected these repairs to have been completed or even assessed during the first days following a flooding incident that I find the tenants were at least partially responsible for causing. The tenant's evidence on the lack of access to the vanity changed during the course of this hearing. I also do not share the tenant's view that the lack of access to a bathroom vanity for the purposes of washing hands when another functioning sink was still working represented a significant loss in the value of his tenancy. In general, I find the evidence from the landlord and the building manager more consistent and credible with respect to many of the issues in dispute regarding the tenant's claim. For these reasons, I allow the tenant a monetary award of \$145.00 for the loss in value of his tenancy over a one-month period, representing a 10% reduction in the value of this tenancy for a single month.

I dismiss the tenant's claim for a reduction in rent to compensate him for increased utility costs during the period of the repairs without leave to reapply. I find the tenant's claim in this regard speculative at best and dependent on far too many variables that may have accounted for higher hydro costs over one period as opposed to another of this tenancy. I find the landlord's evidence with respect to the duration of the use of the dehumidifiers more specific and credible than the evidence provided by the tenant to support his claim for a monetary award to reduce his hydro costs over the period of the repairs. Again, I also take into account my finding that the tenant is at least partially responsible for these repairs undertaken by the landlord.

I have also considered the tenant's application for a monetary award for labour conducted by the tenant and co-tenant to clean up the rental unit after grout and concrete dust were spread over a broad section of the rental unit. On this issue, I find that the tenant's photographic evidence, including the dates and times when these photographs were taken, was far more convincing than the landlord's sworn testimony that he checked the rental unit after the cleaning was supposed to have been done and found no need for concern. Although I allow a monetary award to the tenant for this item, I limit this award to an hourly rate of \$15.00 per hour for a total of 16 hours. This results in a monetary award in the tenant's favour in the amount of \$240.00 (16 hours x \$15.00 per hour = \$240.00).

As noted at the hearing, I find no basis whatsoever to the tenant's request that I issue an order to the parties to modify this fixed term tenancy agreement to a periodic tenancy agreement. The repairs were completed over two months ago and the tenant(s) remain committed to the contractual obligations they entered into with the landlord when they signed the fixed term Agreement. I dismiss the tenant's application for the issuance of an order to change this to a periodic tenancy without leave to reapply.

As the tenant has been partially successful in this application, I allow the tenant to recover \$25.00 of his filing fee from the landlord.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$ 410.00, reflecting monetary awards of \$145.00 for the loss in value of the tenancy, \$240.00 for losses resulting from having to clean the rental unit, and \$25.00 to partially recover the tenant's filing fee. To implement this award, I order the tenant to reduce the amount of monthly rent to be paid for January 2014, or the next month after the tenant receives this decision, by \$410.00 on a one-time basis. Monthly rent for that month will be \$1,040.00. I also order that the monthly rent for this tenancy reverts to the \$1,450.00 amount stated in the Agreement for the remainder of the initial fixed term of this tenancy.

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: December 17, 2013

Residential Tenancy Branch

