



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Propsero International Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNDC MNR

Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and recovery of the filing fee; and (b) an application by the tenant for a monetary order and recovery of the filing fee. Both parties attended the hearing and had an opportunity to be heard.

I wish to state at the outset that this hearing was very difficult to conduct due to the parties' constantly interrupting each other and the whole thing devolving into a shouting match on several occasions. I became very angry at the parties at one point and advised that I would not be able to continue the hearing if their conduct did not improve. I acknowledge that my patience had worn thin but after my reprimand the hearing went along much better.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on June 1, 2006. The rent is \$1380 per month. The current landlord purchased this building approximately 2 and a half years ago and since that time has been renovating the units in the building to modify and enlarge them.

By way of a letter dated May 29, 2013 the landlord advised the tenant as follows:

"As you know, there is work being done in the building; a portion of which involves plumbing changes. Your unit will be affected by this. We will need access to your unit for roughly 3 weeks to do this work..."

This letter gave rise to a negotiation between the parties for the terms under which the tenant would move to another unit to accommodate the construction. Ultimately, by way of a letter agreement dated July 8, 2013, the parties agreed to the terms of the move, including the following:

- *The tenant will move to Unit #304 for the period July 10 to August 1 (or longer if needed)*
- *No rent would be payable by the tenant for the month of July or longer; up to the date the tenant is returned to her Unit #307 "in the peace and comfort that existed prior to the construction"*
- *The landlord will provide professional movers to move the tenant's belongings to #304 and then back again to #307 with all boxes being sealed and numbered*
- *If the tenant is not able to move back to #307 by August 1 the landlord will compensate the tenant at the rate of \$100 per day*
- *The landlord will compensate the tenant for the loss of 4 work days due to the moves at a rate of \$320 per day for a total payment of \$1280*

Following the completion of this agreement the tenant moved out of her unit and into #304 on July 10. The tenant was not able to return to #307 however until August 7th – six days past the August 1 deadline. In point of fact, the tenant could have moved back into her unit on August 1st but because it had not been properly cleaned up and painted, the tenant refused to go back and agreed to a reduced 'penalty rate' of \$50 a day for the August 2 – 7 period. Then, on the very day that the tenant moved back into her suite on August 7th there was a major flood caused by a worker accidentally hitting a sprinkler head and Unit #307 was completely flooded. The tenant then had to vacate her unit and move back into Unit 304 until September 16 while the unit was repaired from the flood.

After the tenant was back in her unit the parties began to fight over the amount of compensation owed to the tenant. The main point of disagreement (but not the only one) was over the 40 day delay caused by the flood.

The tenant's position is that the flood delay was related to the initial work covered in the initial agreement between the parties whereby the tenant would not be liable for rent for the alternative unit or other expenses normally related to such a flood and that she would be entitled to the \$100 per day penalty for the 40 days.

The landlord's position on the other hand is that the flood was outside the terms of the initial agreement, that the leak was not foreseeable and that the 40 day delay was not contemplated at the time the parties reached their agreement as to compensation.

Ultimately, the parties could not reach an agreement and both filed Applications for Dispute Resolution with the Residential Tenancy Branch. Both parties filed their claims on October 9, 2013.

Analysis

Tenant's Claim

The tenant's monetary claim is comprised of the following:

Penalty for Aug 1	\$100
Penalty for Aug 2 – 7 (6 days @ \$50/day	\$300
Penalty from Aug 8 – Sep 16 (40 days @ \$100/day	\$4000
Compensated wage replacement (2 days @ \$320/day)	\$640
Wage loss for August 7	\$320
Hydro consumption from Jul 5 to Sep 4	\$52.09
Food destruction estimate	\$150
Perfume bottles destroyed	\$150
TOTAL	\$5712.09

I shall deal with each of these claims in turn.

Penalty for Aug 1 (\$100) – I am satisfied that the tenant has established this claim based on the initial agreement reached between the parties.

Penalty for Aug 2 – 7 (\$300) – I am satisfied that the parties had reached a second agreement that reduced the daily penalty to \$50 from \$100 and that the tenant has established this claim.

Penalty from Aug 8 – Sep 16 (\$4000) – I am not satisfied that the tenant has established this claim. In my view the penalty provision in the initial agreement was included as an incentive to ensure that the landlord completed the construction work affecting the tenant's unit in a timely manner. It was not intended as an insurance policy against all manner of events that might unfold in the unit. It is a very unfortunate coincidence that the flood happened on the very day the tenant moved back into her unit after being so displaced but I am not in agreement that this flood formed part of the

construction project that was contemplated by the initial agreement between the parties. I therefore dismiss this portion of the tenant's claim.

Compensated wage replacement (\$640) – I am satisfied that the tenant has established this portion of her claim as it formed part of the initial agreement made between the parties.

Wage Loss for Aug 7 (\$320) – I do not agree that the landlord is liable for this loss. Again, this relates to my finding that the initial agreement applied only to the construction period and not to the flood delay which was not contemplated by the parties. Further, I am not satisfied that the tenant would have been entitled to such wage loss compensation if there had been a flood that was not coincidental with the ongoing construction in the building.

Hydro Consumption (\$52.09) – The tenant claims that she is entitled to reimbursement for hydro consumption in her unit due to fans used first to dry the drywall after the construction phase and then to dry everything after the flood. While the hydro bill submitted by the tenant does not correspond exactly to the period during which these fans were being used, I find it reasonable that the landlord should cover the hydro costs as presented by the tenant. The tenant was not residing in the unit for the bulk of this billing period. I therefore find that the tenant has established this portion of her claim.

Food and perfume loss (\$300) – The tenant claims that her perfume bottles fell off the shelf in her bathroom due to the pounding during construction and that she lost food that was in her fridge when the power was out after the flood. The amounts claimed by the tenant (\$150 for perfume, \$150 for food) have been depreciated from her original claim that they were each worth approximately \$300. The landlord disputes this claim saying that the tenant has not provided any receipts or documentation and that it was all used and should be depreciated as such. To my mind, contents are not usually the responsibility of a landlord but in this case where there is a direct correlation between the construction and the perfume bottles falling, I find that the tenant is entitled to be reimbursed in the amount of \$150 for the perfume. I am not satisfied however, that the tenant is entitled to reimbursement for her lost food. Again, this loss seems more related to the flood than the landlord's construction. In any event, the tenant bears the burden of proving her claim and I find there is inadequate information before me to find that she is entitled to reimbursement for food.

In total, I find that the tenant has established a monetary claim against the landlord in the amount of \$1242.09.

Landlord's Claim

The landlord's monetary claim is comprised of the following:

Moving costs (\$533.14 + \$488.25)	\$1021.39
Unpaid rent (Aug 7 – Sep 16)	\$2009.68
TOTAL	\$3031.07

I shall deal with each of these claims in turn.

Moving Costs (\$1021.39) – The landlord paid movers to remove the tenants' belongings from the flooded suite and then back into that suite once it was repaired and dry. The landlord now seeks to be reimbursed for those costs. The landlord makes this claim on the basis that it was not liable for the flood in the sense that it was an unforeseeable accident and that the initial agreement (which did cover moving costs) did not apply to the flood situation. While this may seem contradictory to the parties given my findings above, I am of the view that the landlord is not entitled to recover these costs from the tenant. The moving costs are not in the form of a penalty and would be an out of pocket loss to the tenant through no fault of her own. I dismiss this portion of the landlord's claim.

Unpaid rent (\$2009.68) – While I agree that the tenant should pay some rent for the period from August 7 to September 16 because this period was not covered by the initial agreement, I find that the amount claimed by the landlord should be nonetheless reduced by 50% to account for the dislocation of the tenant and the inconvenience this caused her. I therefore find that the landlord has established a claim of \$1004.84 for unpaid rent.

In sum, I find that the landlord has established a monetary claim of \$1004.84.

Conclusion

I have found that the tenant has established a monetary claim in the amount of \$1242.09 and that the landlord has established a claim in the amount of \$1004.84. When set off against each other, there is still \$237.25 owing to the tenant. I hereby authorize the tenant to deduct this amount off a future rent payment.

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 4, 2014

Residential Tenancy Branch

