



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RDG Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. During the hearing the tenants withdrew their application to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenants and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent testified that they did not get the tenants Notice of hearing until January, 2014. The tenants testify that this was sent with the original paperwork by registered mail in October, 2013. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this fixed term tenancy started on April 15, 2012. The tenancy agreement has since been renewed for another year. Rent for this unit is \$1,790.00 per month and is due on the 1st of each month.

The tenants testify that on August 10, 2013 a flood occurred in their unit caused from the unit above. The landlord was notified and a restoration company came out to explore what damage had been caused in the tenants' unit. This exploration involved removing sections of the drywall and the toilet. A large dehumidifier was put in the unit and the unit was deemed to be uninhabitable while the restoration work continued.

The tenants testify that they went to stay at their daughters while waiting for their insurance company to look into their claim for accommodation. The tenants then went to live in a hotel while the restoration workers remedied the damage to their unit. The tenants requested that the landlord stop cashing their rent cheques as they were not able to live in their unit; however, the landlord continued to do so. The tenants testify that this flood damage caused a huge disruption to their life and their insurance will increase as a result of their claim and a deductible will have to be paid by the tenants. The tenants seek to recover a prorated rent of \$1,270.28 for August and all the rent paid for September, October and November, 2013. The total amount of rent claimed for these months is \$6,640.28. The tenants request that this is an amount they may deduct from future rent along with the \$100.00 filing fee.

The landlord's agent disputes the tenants' claim. The landlord's agent testifies that they spoke to the landlord's insurance company and the Residential Tenancy Branch and

were informed that as the tenants have not actually suffered a loss then they are not entitled to recover the rent paid. Had the tenants not paid the rent or stopped rent cheques the landlord would have issued the tenants with a 10 Day Notice to End Tenancy for unpaid rent. The tenants were also informed that they could end the tenancy without penalty. The landlord's agent testifies that their position is that the tenants should not be able to make money on this matter and their hotel bills were covered by their insurance.

The landlord's agent agrees that the unit was inhabitable but all the tenants' belongings remained in the unit. The landlord's insurance company will not pay for a loss of rent as there has not been a loss of rent to the landlord on this unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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.

In this case the tenants were unable to live in the rental unit from August 10, 2013 to December 06, 2013. Through no fault of their own the tenants were deprived of the use of the rental unit due to the actions of a third party. Despite the landlord's arguments that the tenants' belongings remained in the unit, the tenants could not live there and were greatly inconvenienced due to the damage the unit incurred.

In this case the parties could have ended the tenancy as the contract could no longer be fulfilled and was frustrated. However the parties did not end the contract and the tenants resided in a hotel paid for by their insurance company. If the contract had been ended for this purpose the tenants would be entitled to recovery any rent paid for the period after it had become frustrated. However as both parties agreed that the tenancy would continue I find the tenants are still entitled to recover the rent paid for the period of time they were unable to reside in the rental unit. I therefore find the tenants have established a claim to recover the rent paid for the period of August 10 to November 31, 2013 of **\$6,640.28** pursuant to s. 67 of the *Act*.

As the tenants have been successful in this matter I find the tenants are entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. I order the tenants to deduct the amount of **\$6,740.28** from future rent due and payable to the landlord. Starting from the next rent payment due until the amount is satisfied.

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: January 27, 2014

Residential Tenancy Branch

