



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order for emergency and other repairs – Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Landlord’s Witness provided evidence under oath.

Preliminary Note

This Hearing was initially scheduled and held on March 24, 2014. As the time allotted was insufficient to hear all the matters under dispute the hearing was reconvened to May 21, 2014 for conclusion.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following is undisputed or agreed evidence: The tenancy started in March 1998 and rent of \$1,269.00 is currently payable each month. On December 7, 2013 the

Tenant's unit was flooded by a defective sprinkler system and the unit became uninhabitable. The Tenant paid full rent for December 2014, January 2014 and February 2014 during which repairs were being made to the unit. The Landlord does not dispute the Tenants' claims for **\$20.00** for the loss of a bath mat and **\$20.00** for the cost of laundry damaged as result of the flood.

The Tenant states that the Landlord accessed the Tenants' hydro source for the period of the repairs and claims \$243.81 as the cost of this hydro. The Landlord agrees that the hydro was used but not to the extent claimed and states that a fair amount would be \$185.00 for this usage.

The Tenant states that following the flood the unit was uninhabitable however as the Landlord did not communicate at all with the Tenant about alternate housing while the unit was being repaired, the Tenant used their insurance to cover their costs for alternate temporary accommodation. The Tenant states that despite the rental unit being immediately unliveable they had no other place to go until they were provided with alternate accommodation by their insurance company at the earliest date on December 13, 2013 until February 14, 2014. The Tenants argue that the Landlord is responsible for their losses as they did not cause the loss of the rental unit and claim as follows:

- \$500.00 for the cost of their insurance deductible;
- \$2,727.00 for the loss of use of the unit for the period December 7, 2013 to February 17, 2014.

The Landlord states that they are not responsible for the repayment of rent as the tenancy agreement requires the Tenants to carry insurance and the Tenants insurance covered their accommodation costs during the repairs. The Landlord points to the liability waiver clause in the tenancy agreement that provides in part "The Tenant waives any right of action and releases the Society from any liability in connection with the use or occupation by the Tenant of the Premises . . ."

The Landlord's witness states that repairs to make the unit liveable were completed by December 27, 2013 and further repairs continued to the end of January 2014. The Landlord states that the Tenants were informed they could move into the unit on February 1, 2014 as the only outstanding repair was to replace the carpets which was completed by February 7, 2014

The Tenant states that their insurer was responsible for arranging the move back into their rental unit and that the earliest a mover could be found was February 17, 2014. The Tenants states that their insurance was capped and coverage for their housing costs ended on February 14, 2014 so they were required to stay in a hotel until February 17, 2014. The Tenant states that the rental unit is located approximately 5 or 6 blocks away from their employment and that to obtain temporary housing as soon as possible their insurance provided them with a unit that was about 15 minutes by car or a half hour by bus to work. The Tenants state that they had no choice in the matter. The Tenant states that they had to move computers, books, a printer, some dishes, clothing, and a new replacement bed to their temporary housing and back as well as snow board equipment used by the Tenant's son who volunteers on a mountain. The Tenant states that these costs were not covered by their insurance. The Tenant claims as follows:

- \$143.00 for bus fare;
- \$43.00 for cab fare;
- \$165.00 for a rental truck;
- \$85.00 for gas
- \$603.00 for hotel costs.

The Tenant states that two days of work were missed as a result of having to meet with her insurer and to move back into the rental unit. The Tenant states that the insurance was in her name and no one else was available to oversee the placement of their belongings. The co Tenant states that he was either working or preparing meals for the family at the time of the move. The Tenant provides a letter from her employer and claims \$108.00.

The Landlord argues that the Tenant should have found a closer location, should have tried to mitigate their losses and that the Tenant's insurance should have covered the losses claimed. The Landlord argues that the Tenant did not need to miss work to attend to the insurance matters and to move.

The Tenant states that there is mold around a window that has been leaking for the past year and that although the Landlord has been informed nothing has been done. The Landlord states that they are in the process of replacing this and other windows and will have the window repaired and the unit inspected for mold on or before June 15, 2014.

The Tenant states that the unit has not been painted for over 9 years and asks for an order that the Landlord paint the unit. The Landlord states that the unit will be inspected and if it does not need paint, it will not be painted.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

As the Landlord is required under the Act to provide a habitable unit and as the Act requires the Landlord to compensate a tenant where the Landlord has not complied with the provision of a habitable unit, and based on the agreed facts that the unit was

uninhabitable due to no cause of the Tenant, I find that the Landlord is obliged to provide compensation for the loss. I also find that the waiver of liability contained in the tenancy agreement in relation to the use and occupation of the unit is an attempt to contract out of the Landlord's obligations under the Act. As such I find that the liability waiver in the tenancy agreement is of no effect.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the Tenant's insurance covered the costs for the loss of occupation of the rental unit until February 14, 2014, I find that the Tenant has not substantiated the loss claimed for the period December 14, 2013 to February 14, 2014 and I dismiss this part of the claim. Accepting that the rental unit became available by February 7, 2014, I dismiss the Tenant's claim for accommodation costs after this point. Considering the undisputed evidence that the Landlord failed to communicate with the Tenants following the flood about alternate accommodation efforts and considering that the Tenants were required to live in an unliveable unit for the period December 7 and December 14, 2013, I find that the Tenants have substantiated a loss for this period and that the Landlord failed to act in relation to this loss. I find therefore that the Tenants are entitled to a nominal amount of **\$200.00** for their losses. As the Tenants were not responsible for the flood in the unit and considering that the Landlord relied on an ineffective waiver to leave the Tenant's to use their own insurance to obtain temporary accommodation, I find that the Tenants' have substantiated their claim to compensation for the cost of the insurance deductible in the amount of **\$500.00**.

As the use of the utilities by the Landlord cost the Tenants utility charges during a period in which the unit was uninhabitable by the Tenants, I find that the Tenants have substantiated a claim to the utilities that were accrued during the period of renovations and I find that the Tenants are entitled to **\$243.81** as claimed.

I accept that the Tenants reasonably incurred costs to relocate between the rental unit and their temporary accommodation as a result of the loss of the rental unit and find that the Tenants have substantiated an entitlement to the costs claimed for transportation and moving costs in the amount of **\$436.00**. Given the supporting evidence of loss of employment income and finding the Tenant's rationale for having to miss work to attend to business related to the housing to be reasonable, I find that the Tenant has substantiated the lost employment income claimed in the amount of **\$108.00**. Although the Landlord argues that the Tenants should have mitigated their costs, given that the Tenants used their own insurance to cover losses for which the Landlord would likely have been responsible, I find that the Tenants did act to mitigate all losses claimed.

RTB Policy Guideline #40 sets out the general use of life for interior paint as four years. Given that the Landlord has not painted the unit for approximately nine years, I find that the Landlord has failed to maintain the unit in this respect and that the Tenants are entitled to having the unit painted. As a result I order the landlord to ensure that the painting on the unit starts no later than two weeks from the date of this Decision and to be completed within a reasonable time. Should the Landlord fail to paint the unit as ordered, I give the Tenants leave to reapply for compensation for a reduction in the value of the unit. As the Landlord has agreed that the windows will be replaced and the unit inspected for mold, I accept the good faith of the Landlord that this will be done as promised. Should the Landlord fail to carry out these tasks, I give the Tenant leave to reapply for compensation in relation to any losses that may accrue from the leaking window.

Based on the agreed facts I find that the Tenant has substantiated its claim to **\$40.00** for the bath mat and laundry costs. As the Tenant has been partially successful with its claim I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,577.81**. The Tenant may deduct this amount from future rent payable.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,577.81**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

I order the Landlord to paint the unit as set out above.

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: May 22, 2014

Residential Tenancy Branch

