



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dorset Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC, RR, FF

Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / permission to reduce rent for repairs, services or facilities agreed upon by not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on May 01, 2009. Monthly rent of \$1,800.00 is due and payable in advance on the first day of each month, and a security deposit of \$875.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Arising, in part, from leakage in the building envelope, wide ranging repairs / renovations were begun at the building in 2012. In relation to disruption and inconvenience resulting for the tenants, it is understood that monthly rent reductions totalling **\$4,500.00** were offered by the landlord and accepted by the tenants, as follows:

2012:

\$100.00: *August*

\$800.00: *(\$200.00 x 4) September, October, November & December*

2013:

\$2,400.00: *(\$200.00 x 12)*

2014:

\$1,200.00: (\$200.00 x 6) *January to June*

Further to the above, the tenants seek additional compensation. In their email to the landlord dated May 05, 2014, they set out a justification for such compensation, in part:

The issue is the old undisclosed ceiling leak, further worsened by the construction that resulted to collapse, flooding, moulds, loss of property, loss of bedroom use.

The landlord proposed additional compensation in the total amount of \$600.00, calculated on the basis of "temporary loss of one bedroom....for approximately 4 months." However, the tenants declined and seek "450.00 x 5 months = \$2250." Included in their submission the tenants have provided an overview of their communication to the landlord in relation specifically to the 2nd bedroom:

November 26, 2012

first email about the ceiling leak, damp hardwood floor

April 19, 2013

photo sent re: wall bubbling, moulds in ceiling, damp floor

August 29, 2013

photo sent re: collapsed ceiling

November 27, 2013

2nd bedroom ceiling still a big gaping hole

March 3, 2014

still waiting for 2nd bedroom to be fixed

March 25, 2014

ceiling needs to be fixed and floor need to be changed due to mould

The parties agreed that repairs to the 2nd bedroom were completed in April 2014.

Analysis

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment:**

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights 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]*;
- (c) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 also speaks to "Right to Quiet Enjoyment."

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

- 32 (1) 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
- (5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further, Residential Tenancy Policy Guideline # 22 speaks to "Termination or Restriction of a Service or Facility."

Based on the affirmed testimony and the documentary evidence which includes, but is not limited to, extensive email and letter exchanges between the parties, and photographs, and in consideration of the above statutory provisions and Guidelines, I find that the tenants have established entitlement to certain compensation. I find that this entitlement arises from the broad disruption, inconvenience and loss of quiet

enjoyment related to repairs / renovations to the building, and includes the temporary loss of use of the 2nd bedroom in the unit. Related to the foregoing, over a period of 23 months from August 2012 to June 2014 the tenants were provided with rent reductions in the total amount of \$4,500.00, as set out above.

As to additional compensation, there is no conclusive documentary evidence before me concerning the specific period(s) of time during which the 2nd bedroom was unable to be used. Neither is there an inventory with respective value(s) of property which the tenants claim was lost as a result of leaks, flooding or mould. On balance, I find that the landlord's offer of additional compensation in the amount of **\$600.00** is reasonable. As the tenants have succeeded with their application in so far as the compensation to be awarded is limited to what have been offered by the landlord, I find that the tenants have established entitlement to recovery of ½ the \$50.00 filing fee, or **\$25.00**.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part:

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and...

Conclusion

Following from all of the above, I order that the tenants may withhold **\$625.00** (\$600.00 + \$25.00) from the next regular payment of monthly rent.

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 11, 2014

Residential Tenancy Branch

