



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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; for an Order to reduce rent for repairs, services and facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The tenants and 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 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?
- Are the tenants entitled to an Order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2014 for a fixed term which expires on February 28, 2015. Rent for this unit is \$2,500.00 per month and is due on the 1st of each month.

The tenant TU testified that on August 05, 2014 the washing machine drain hose became disconnected and flooded the dining room, kitchen and laundry upstairs and the kitchen, living room and hallway downstairs. The water also caused damage to the walls, flooring, ceiling, kitchen cupboards, countertops and baseboards and door frames. All of which needed to be replaced or repaired.

TU testified that they had previously informed the landlord that there was a problem with the washing machine but nothing had been done about it. TU testified that immediately after the flood they informed the landlord and the landlord sent someone round to help with the water and to look at the damage. On August 06, 2014 the restoration company came to assess the damage. This company then returned many times to continue with the restoration work. The kitchen in the basement section of the home where TU's son resides was finished on August 29, 2014. The flooring and most of the other work was completed on November 17, 2014, the baseboards and mouldings were done on December 02, 2014 and the touch ups are scheduled to be done on December 22, 2014. TU testified that this period was a very stressful time for the tenants. The tenants have had to live with this mess and disruption since August 05 and have lost the use of areas of the house as furniture has had to be moved from one room to the other to allow for work to be completed. TU testified that since this occurred the landlord has still not sent anyone to look at the washing machine and has not communicated fully with the tenants.

TU testified that the landlord prolonged the repairs to the floor as the landlord had a floor sample at the beginning of September but by November he had still not ordered the flooring. When TU called the restoration company to enquire what was happening she found out the landlord had not ordered the new flooring. TU testified that they wanted the landlord to match the existing flooring and were told this could not be matched and the entire floor needed to be replaced. If the landlord had ordered the new flooring the work could have been done much sooner.

TU testified that they have calculated compensation based on the overall square footage of the home and the square footage of areas of the home which could not be used from August 05, 2014. TU testified that the landlord did deduct \$300.00 from September's rent in compensation for the tenant's inconvenience through the month of August but no further amounts have been deducted for the continued inconvenience and loss of enjoyment of the home from September to December. The tenants seek to recover the amount of \$1,250.25 in compensation and are willing to accept this in the form of a rent reduction.

The landlord disputed the tenants' claim. The landlord testified that the tenants are required to take out their own insurance to cover them for any loss in accordance to their tenancy agreement. The landlord testified that he has been communicating with the tenants through text messages and when TU called about the flood, the landlord sent a handyman to the unit; however, this handyman could not do the work so the landlord called the restoration company. From August 12 to September 28, 2014 the landlord testified that he dealt with the tenants but they did not mention the progress of the restoration work and the landlord thought it was completed. On September 28 TU called and asked the landlord to talk about a rent reduction as the tenants' could not use part of the house. The landlord testified that it was only at this time that the landlord realized that the work was not complete. The tenants were given a credit of \$300.00 as a good will gesture as the landlord knew the tenants were distressed.

The landlord testified that on September 28, 2014 when he found out the work was not completed he sent an email to the restoration company asking why the work was not finished. The restoration company said they would send flooring samples which took another two weeks to come. When these arrived the landlord took them to the tenants and found out the flooring upstairs did not match. The landlord testified that it was the insurance adjuster that said the flooring downstairs could be used upstairs and then new flooring was ordered for the downstairs. The landlord testified that the tenants had complained that the downstairs flooring was mouldy; however, the restoration company said the flooring could be sanitized and the floor was laid upstairs on November 17, 2014. The landlord testified that he understands that the tenants are distressed but if they had informed the landlord sooner he could have done something about the work.

TU testified that they were under the impression that the landlord was dealing with the restoration company and the insurance adjuster concerning the work and in getting a cheaper quote for the flooring. The downstairs flooring was only trimmed and was not sanitized before it was laid. The tenant testified that none of this would have happened if the landlord had only taken the appropriate steps to inspect the washing machine when the tenants sent the landlord emails in April and May, 2014.

The landlord testified that he did come and observe the washing machine for 10 minutes and it was working. The tenant argued that on November 01, 2014 the landlord observed the washing machine and said there was still a problem and he would send someone to look at it. As of today no one has been out to look at the washing machine and the tenants have put wedges under it to prevent it moving again.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the landlord did contact the restoration company in a timely manner on August 06, 2014 and repairs to remediate the damage caused by the washing machine were started and have continued since that date; however, I find the tenants have been left with the mess and disarray these restorations have caused and have suffered distress and a loss of use of areas of the rental unit over a five month period.

I am satisfied that the tenants have had the use of the rental unit restricted during the repair work. The landlord has testified that the tenants should have their own insurance but as the tenants' belongings, which would be covered by any tenant's insurance, were not damaged then I am unsure what the landlord is referring to regarding that issue. The fault lay with the washing machine and the flood occurred as a direct result of that washing machine malfunctioning. I find the tenants' evidence more credible concerning their claim that the landlord did not undertake his due diligence in ensuring the new flooring was ordered quickly. It is the landlord's responsibility to liaise with the restoration company and not the tenants. Had the landlord kept a closer eye on the work instead of relying on the tenants, the landlord could have taken steps to either ensure the new flooring was ordered in a timelier manner which could have resulted in the overall repair work being completed sooner. I find the landlord's statement that he did not know the work was not completed to have little bearing as the landlord should have ensured he was well informed as to the repairs and would have had to sign off on repair work when the restoration company had completed them.

I am therefore satisfied that the tenants are entitled to some compensation for the disruption and loss of quiet enjoyment of the rental unit along with the loss of the rental space. I find the tenants' calculations to be fair and equitable regarding the overall square footage of the home and the square footage of unusable space. I also find the tenants were compensated the amount of \$300.00 for August so have based their claim from September to December. While I am satisfied that most of the useable space was back in place from November there are still some touch ups required which will be completed on December 22, 2014. Although these may be minor in nature I find having more days for the restoration company to enter the home will continue to disrupt the tenants' lives. Having reviewed the evidence before me I find the amount of restoration work required in the home to return it to the same condition as it was prior to the flood resulted in not only the loss of these areas of the home but also caused considerable disturbance to the tenants quiet enjoyment of their home.

It is therefore my decision that the tenants' claim for \$1,250.25 is upheld. As the tenants have been successful with this claim I find the tenants are also entitled to recover the filing fee of \$50.00 from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I Order the tenants to reduce their rent by the amount of \$650.12 for the following two months starting on January, 01, 2015. This means the tenants' rent for January and February will be \$1,849.87 a month.

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 19, 2014

Residential Tenancy Branch

