Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD RP

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on December 31, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and an Order to have the Landlord make repairs to the unit, site, or property.

The hearing was conducted via teleconference and was attended by the Tenant and two representatives for the Landlord. Testimony for the Landlord was primarily submitted by E.P. however C.A. did submit some evidence. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Should the Landlord be ordered to complete repairs to the unit, site, or property?

Background and Evidence

The undisputed evidence was that the Tenant entered into a fixed term tenancy that began on May 1, 2014 which is scheduled to end on April 30, 2015, at which time the

Tenant is required to vacate the property. Rent plus utilities totaling $1,150.00 is due on or before the first of each month and on April 24, 2014 the Tenant paid $500.00 as the security deposit. The rental unit was described as a 2 bedroom basement suite.

The Tenant testified that on September 24, 2014, she contacted the Landlord to advise that she thought there was water pooling underneath the floor in her rental unit. An employee of the Landlord's attended the rental unit with a moisture reader and determined that the moisture readings were within normal amounts and he did not think there was water underneath the flooring material. The Tenant contacted the Landlord two days later and advised that she had seen water coming up between the floor boards.

The Tenant submitted that although the Landlord had contractors working on the outside of the building hanging up eaves troughs and checking the perimeter drains, they did not arrange to have anyone attend to the repair issues required inside the rental unit until the first week of November 2014; which is when the contractors began removing the flooring.

The Tenant reference her written submissions which included a chronological list of events and argued that the Landlord did not provide her with a "plan of attack" they were using to address the repairs. She stated that she has continued to pay her rent as required, however she has been left to live in a state of renovation or remediation since September 2014, and without the use of her daughter's bedroom. The Tenant stated that they have been left with glued spattered concrete floor where the laminate or hardwood material had been removed. She argued that the removal was not a clean job as there are jagged pieces of wood still attached, nails and screws protruding out of the floor, and there is a horrible "toxic" odor coming from the glue once the flooring was removed.

The Tenant testified that since the floor material was removed in early November 2014 her 12 year old daughter has been without the use of her room and has been forced to sleep with her. She argued that this situation has caused her family stress, her daughter could not have her birthday party sleepover, and she could not have guests over during the holidays. They have not had use of her daughter's bedroom so she is paying for a two bedroom but living in a one bedroom. The Tenant argued that they have lost use of the kitchen and have had to live with a hole in the wall, which has all reduced their pleasure and quiet enjoyment. As a result the Tenant is seeking compensation in the amount of $2,000.00 which is comprised of $500.00 per month for the four months of October 2014 through to January 2015. She is also requesting that the Landlord be ordered to complete the repairs as soon as possible.

The Landlord testified and confirmed that they had been notified of the Tenant's concerns on September 24, 2014 as the Tenant described. The Landlord argued that the delays with enacting the repairs were the result of the Tenant not allowing their contractor access to the rental unit. Upon further clarification the Landlord stated that it is their practice to have repair contractors deal directly with their tenants when

scheduling access to the unit and in this case this Tenant had requested that she be present when a contractor attends. The Landlord provided documentary evidence from one contractor who indicated that he was delayed in conducting the work because he was waiting to hear back from the Tenant on when he could gain entry. The Landlord argued that the delays were the result of the Tenant not communicating with the contractor and allowing them access as well as the contractors being very busy as there had been a lot of flooding in their city at that time.

The Landlord submitted that they had initially thought that the water was coming from broken water pipes from the in-floor heating system and that the owner's insurance would be covering the remediation and repairs. As per their documentary evidence at L-4, the contractor removed the flooring on November 5, 2014. Then on November 6, 2014, the Landlord received an email from the contractor indicating that the contractor was still unsure of the source of the water and suggested that they investigate the perimeter drainage system. The Landlord did not want to move ahead with repairing the floor until they knew that the problem had been rectified.

The Landlord argued that it was not until November 26, 2014, when they received the drainage report that they determined that the perimeter drains were clogged and were the cause of flood.

The Landlord stated that the remediation company was initially in charge of the job as they had initially thought it would be covered by the owner's insurance. Once they determined that the plugged perimeter drains were the cause of the flood, the owner's insurance was not covering the job and the owner had to make the decision on how they would move forward as the owner was required to pay for the repairs.

The Landlord referenced the chronological list of events provided in their evidence at which time I pointed out a pattern of a 14 day period of delay after each communication between a contractor, the Tenant, and/or the Landlord. Upon further clarification the Landlord submitted that the owner was out of the Country and as they were agent of the owner, they could not proceed through the steps of the remediation/repairs without communicating with the owner and obtaining his approval.

The Landlord stated that the job has been moving forward and since November 25, 2015, they have dug a trench, the drains were repaired December 16, 2014, they re-read the moisture levels inside the house on December 17, 2014 and suggested that the Tenant turn up the heat to dry out the floor faster. The Landlord testified that the new flooring was ordered last week (approximately January 17, 2015) and is expected to be installed in 2 to 3 weeks. The Landlord said that she has been in constant contact with the Tenant via text messages; however, they did not submit those text messages into evidence because they did not think they would be accepted as evidence.

The Landlord disputed the Tenant's claim for monetary compensation and argued that the Tenant is in breach of her tenancy agreement as she failed to have adequate

tenant's insurance. The Landlord pointed to the tenancy addendum # 8, provided in their evidence which states:

> *8. Tenant(s) are responsible for carrying sufficient tenants' insurance as per attached memo.*

The memo titled "Tenant Insurance" states the following in paragraph one:

> *Your Landlord's insurance does not cover your personal possessions, or your liability to property damage or bodily injury arising from you negligence [sic].*

The Landlord argued that even though the Tenant's possessions or contents were not damaged, if the Tenant had insurance the insurance company would have provided the Tenant with alternate accommodations during the repairs.

In addition, the Landlord stated "yes, the Tenant has been inconvenienced" and then argued that although the flooring had been removed in the bedroom, in part of the hallway, in the kitchen, and there was a small hole in the wall in the kitchen, the Tenant has not lost use of any portion of the rental unit as there is still a concrete floor. The Landlord stated that the flooring material was removed from one of the bedrooms and all of the bedroom furniture remains; therefore, the Tenant still has full use of that bedroom.

The Tenant disputed the Landlord's submission that they have been in regular contact with her. She argued that none of the contractors made an effort to bring in drying equipment, such as fans, and they made no mention of turning up the heat to dry out the concrete floors until December 2014, three months after the water first came into the rental unit. The Tenant confirmed that she had initially requested to be at the unit when the contractors were going to be there as the Landlord was not planning to attend with the contractors and she was not about to let a contractor, whom she does not know, roam unattended in her home.

The Tenant disputed the Landlord's submission that they have had full use of her daughter's bedroom and the rest of the unit. She noted that the Landlord herself has not attended the rental unit since the water damage occurred; therefore, the Landlord does not have firsthand knowledge of the health hazards coming from the smell of the flooring glue since the floor was removed, or the hazards caused from splinters still attached to the floor, or the exposed nails and screws left sticking out of the concrete floor. She submitted that her daughter's bedroom furniture has been covered by plastic and the fumes from the glue are so bad that she cannot sleep in that room.

The Tenant argued that the constant 2 week delays had nothing to do with a lack of communication from her and that she has constantly been trying to obtain information from the Landlord and their contractors. She questioned the Landlord's submission about when the floor would be installed as she had not been told, prior to the hearing, that the Landlord had ordered the flooring. Rather, she had spoken with the Landlord's

flooring contractor the day before this hearing, January 19, 2015, and was told that the Landlord had not ordered the flooring as of that date, despite the flooring company measuring the rental unit and providing a quote to the Landlord on November 6, 2014.

In closing, the Tenant admitted that at the time the water damage occurred, she did not have tenant's insurance. The Tenant argued that even if she did have tenant insurance the insurance company would only provide her alternative accommodations for a limited amount of time to complete repairs, and that insurance coverage would not be for an indefinite period of time when dealing with unjustified delays.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that the rental unit flooded, required repairs, the flooring was removed on November 5, 2014, perimeter drains were repaired December 16, 2014, and to date the flooring has not yet been replaced. As such, I make no findings on the matter of the necessity of the work.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

When the flood first occurred, the Landlord initiated repairs in a timely manner; however, those repair efforts have since been stalled and or delayed. In this case the evidence clearly supports that the Landlord has taken what I would refer to as a "back seat" approach with getting the repairs completed by requesting that the Landlord's contractors deal directly with the Tenant and not with the Landlord. The evidence further supports the presence of delays as the Landlord has not diligently monitored their contractor's progress, within reasonable time frames. In addition, the Landlord has never attended the rental property to see the actual conditions at any stage of the repairs.

I do not think it is a mere coincidence that the repairs were initiated in a timely fashion when the Landlord was of the opinion that the repairs would be covered by the owner's insurance and those actions became stalled once they determined that the owner's insurance would not cover the repairs and the owner was now required to pay out of pocket for the repairs. I do not accept the Landlord's submission that they cannot be in contract with the owner for periods up to 14 days at a time because the owner is out of the country and emails can be problematic in that country, as there are numerous other forms of communication, such as telephone, fax, and text messaging, that can be incorporated when dealing with business issues abroad. The burden of dealing with an

absent owner, and keeping in regular contact, is the responsibility of an agent and not the tenant.

I do not accept the Landlord's submission that the Tenant has been the cause of all the delays in completing these repairs. Yes, I accept there is evidence that there was a three day delay back in September 2014 caused by the Tenant wanting to be home when a contractor that she was not familiar with would be entering her home, unattended by the Landlord. I suspect the delay would not have occurred had the Landlord made an effort to attend the property with their contractor.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

Notwithstanding the Landlord's oral submission that they have had text message conversations with the Tenant throughout the past several months, in absence of evidence to support that allegation and without proof of the actual content of those messages, I accept the Tenant's assertion that she has not been properly informed of the status of the repairs. I further find that the initial remediation, or to state it more clearly, the drying out of the concrete floor, was unnecessarily delayed by failure to bring in a dehumidifier or fans to speed up the drying process.

The evidence supports that the tenancy agreement required the Tenant to have tenant insurance for the Tenant's contents plus coverage for liability "to property damage or bodily injury arising from you negligence [sic]". I interpret that liability coverage to be arising from the Tenant's negligence and not the Landlord or owner's negligence in maintaining the perimeter drains. While I agree that an insurance policy may provide alternate accommodations to a tenant in an emergency situation, which could have mitigated some of the Tenant's loss, I accept the Tenant's submission that such coverage would not be long term and certainly would not accommodate unnecessary delays.

Contrary to the Landlord's assertion that the Tenant should not be compensated because she has not lost the use of any portion of the rental unit, I accept the undisputed evidence that the Landlord has not attended the rental property and therefore has limited third party knowledge of the actual conditions of the property. As a result, I find it undeniable that the Tenant has suffered a loss of quiet enjoyment due to the conditions of the rental unit and the continued delays in completing the repairs. Therefore, the Tenant has suffered a subsequent loss in the value of the tenancy for the period since the flood occurred in September 2014 for which the Tenant is entitled to compensation.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the water first appeared in the rental unit on September 24, 2014; the flooring was not removed November 5, 2014 leaving nails, screws, slivers of wood, and the odor of glue; and at the time of this hearing on January 19, 2015 repairs had not been completed.

For the reasons noted above, I find the Tenant is entitled to monetary compensation pursuant to Section 67 of the Act, for the loss of quiet enjoyment in the amount of **$900.00**. This amount is comprised of $300.00 compensation for November 2014, December 2014, and January 2015. No compensation was awarded to the Tenant for the period of September 24 to October 31, 2014 as it is reasonable to conclude that had the Tenant had insurance coverage she would have been compensated for alternate accommodation for that period of time, which I determined would be a reasonable time for conducting the repairs.

In absence of documentary evidence to prove a scheduled completion date for the repairs, and in consideration of the Landlord's affirmed testimony that the flooring material was ordered sometime during the week of January 15, 2015, with an estimated delivery of 3 weeks, I HEREBY Order the Landlord to complete the required repairs no later than **February 28, 2015**. I further Order that the Landlord is to be responsible for monitoring the repairs and for arranging access to the unit with the Tenant for their contractor, in accordance with sections 29 and 32 of the Act.

The Tenant is hereby ordered not to restrict the Landlord and their contractor access to the rental unit, upon receipt of proper written notice of entry. In addition, I order that the contractor must be supervised by the Landlord if the Tenant cannot be present at the scheduled time.

When considering that the repairs will not be completed until on or around February 28, 2015, I grant the Tenant further compensation of **$300.00** for February 2015.

Conclusion

I HEREBY grant the Tenant **$1,200.00** ($900.00 + $300.00) compensation for the period of November 1, 2014 to February 28, 2015. The Tenant may deduct the one time award of $1,200.00 from her future rent as full satisfaction of this claim, pursuant to section 62 of the Act.

If the Landlord fails to complete the required repairs, as ordered above, the Tenant would be at liberty to file another application for additional compensation.

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 23, 2015

Residential Tenancy Branch