



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, OLC, ERP, RP, FF

Introduction

This hearing dealt with an application by the tenant for orders compelling the landlord to comply with the Act, regulation or tenancy agreement and to make repairs to the rental unit; and for a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the tenant entitled to a monetary order and, if so , in what amount?
- Should a repair order be made and, if so, on what terms?
- Should any other order be made against the landlord and, if so, in what terms?

Background and Evidence

The tenancy commenced September 1, 2012 as a one year fixed term tenancy and has continued as a month-to-month tenancy since the expiry of the term. The monthly rent has always been \$1300.00.

The rental unit is a three story town house which is part of a strata complex. The tenant lives there with her sixteen year old son. The tenant testified that she really likes living here – the location is very good and the neighbours are great.

Sometime during the weekend of June 6, 7 and 8 (the parties evidence varied on this issue) the hot water tank ruptured and water spilled into an area of the main floor of the town house. On Sunday, June 8 the plumber was called and attended the same day. The plumber shut off the tank and drained it.

The strata said the repairs that were required as a result of the leaking water was going to be a strata insurance claim. The strata contacted a well know restoration company who attended immediately. They pulled back the living room carpet, removed the under pad, pulled off the baseboards and removed the wet drywall in the affected areas, removed the linoleum from the utility closet that contained the hot water tank and the

small bathroom across from it. They installed drying equipment which ran continuously for the next four days.

The strata's insurance covered everything but the hot water tank. The landlord testified that the hot water tank was replaced on June 10 at a cost of \$1110.38.

The scope and pace of the repairs were controlled by the insurance company. Eventually the drywall was replaced and painted, new flooring was installed in the utility closet and bathroom, and the baseboards were re-installed. The insurance adjuster decided that it was not necessary to replace the sixteen year old carpet so new underlay was installed and the old carpet re-laid.

The tenant testified that all the work was completed on September 6.

The tenant testified that the process was very difficult for her son who suffers from OCD. There was a period of time when they went to her daughter's home to shower. When the drying equipment was in place they could not really access the kitchen.

The tenant was not very specific about dates but she emphasized that they had to wait for days, or even longer, between each step of the restoration process.

The tenant argues that the carpet should have been replaced and asks for compensation equal to the cost of new flooring as compensation for any health hazards that may exist.

Analysis

The usual testimony on cases like this is that the insurance company controls every aspect of the remediation including the scope of work, the contractor who does the work and the pace of the work. My experience from hearing many cases like this is that three months from incident to completion is a normal time frame.

I am not satisfied that the leak or the duration of the disruption caused by the remediation process was a result of any negligence on the part of the landlord. The evidence does not establish that the carpet poses a health hazard or that the remediation was not competently carried out.

However, the fact that the landlord was not negligent does not mean that the tenant is not entitled to some compensation for the disruption she and her son experienced as a result of this incident.

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“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.”

Considering the size of the unit, the intensity of the four day drying process, the number of occasions tradespeople or insurance adjusters would have been in and out of the unit, the fact that most of the living areas were usable during this period and the special needs of the tenant's son, I award the tenant a rent reduction of \$200.00 per month (just over 15% of the monthly rent) for each of the three months that it took to fix her unit, a total of \$600.00.

In addition, as the tenant was at least partially successful on her application I find that she is entitled to reimbursement from the landlord of the \$50.00 fee she paid to file it.

Conclusion

I find that the tenant has established a monetary claim of \$650.00 comprised of damages of \$600.00 and the \$50.00 fee she paid to file her application. Pursuant to section 72 I order that this amount may be deducted from the next rent payment due to the landlord.

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: February 24, 2015

Residential Tenancy Branch

