



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing was scheduled in response to the tenants Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act, an Order the landlord comply with the Act, and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Are the tenant's entitled to compensation in the sum of \$1,366.00 as damage or loss as the result of a flood in the rental unit?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced in October 2013; rent is currently \$2,100.00, due on the 1st day of each month.

There was no dispute that a flood occurred, originating in a neighbouring strata unit, which caused damage in the rental unit. Remediation took place between February 10, and April 6, 2014.

The tenants rent a 3 bedroom strata unit. The tenants use 1 bedroom, their 9 month old uses a 2nd bedroom and the 3rd bedroom is used as an office/guest room. The rental unit is 1,111 sq. feet. The bedroom damaged by the flood is approximately 60 sq. feet in size.

When the flood occurred the laundry room was blocked for approximately 1 week and kitchen for several days, as the result of large fans used to remove moisture. Fans ran continuously in the damaged bedroom, from February 10 to April 6, 2014. The operation of the fans was loud and, over time, became disruptive. The tenant's said the fans affected their enjoyment of the home.

The tenants said they were offered a hotel room by the landlord, but they did not explore this option as a move with their baby would have been more disruptive than remaining in the rental unit. They also checked with their insurer who suggested a stay in a hotel, but this was not considered further by the tenants. The tenants did not know what length of hotel stay might have been possible.

The tenants said that during the time of remediation they had 1 guest visit, who had to sleep in a hotel as the result of the loss of the guest room. Normally the guest room would have been used.

The tenants believe they should be entitled to more than the \$75.00 gift card that was given by the landlord; as compensation for the loss of use of the space in the home and the disturbance of the fans.

The landlord said that they did offer the tenants a hotel and that they paid \$210.00 of the hydro bill; agreeing that sum covered the excess usage needed to run the fans. The landlord understands the tenants were inconvenienced and do not dispute the dryers would have been disruptive. The landlord believes the sum claimed is excessive since the bedroom that was affected comprises approximately 5% of the floor space in the rental unit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch (RTB) policy (#16) suggests that if a tenant is deprived of part of the premises through no fault of their own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation may be in the form of rent abatement, recognizing the portion of the premises or property affected.

There is no dispute that the tenants did suffer some loss of quiet enjoyment as the result of a flood that was no fault of the tenants or landlord. The question that must be answered is whether the tenants would be entitled to more than \$75.00 in compensation that was provided.

I have considered the period of time the rental unit was affected and the degree to which the use and enjoyment of the unit was impacted. The tenant's lost the use of a small bedroom (approximately 5.4% of the rental unit floor space), which was able to be replaced by use of the guest room. There is acknowledgment by the landlord that the tenants would have been disturbed and I find, on the balance of probabilities, that the presence of dryers running for a period of days, combined with the loss of use of bedroom and the loss of use of the 3rd bedroom as a den/guest room would support a claim for loss of quiet enjoyment. There was no negligence on the part of the landlord; however, RTB policy suggests a claim for damage by the tenants could be supported.

I have considered Section 7 of the Act, which provides:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The tenants chose not to accept a hotel room offered by the landlord and possibly available through their own tenant's insurance. They determined leaving the unit would have posed more of an inconvenience. However, the decision to remain in the rental unit reflects what I find supports the fact that a small area of the rental unit was impacted and that the impact from the fans was not intolerable.

Section 67 of the Act provides an arbitrator with the authority to order payment of compensation for damage or loss. Taking into account the length of time the fans were in the home; the decision not to pursue other methods of mitigating the claim made and the fact that the fans were not present, for most of the time, outside of the 1 bedroom, I find that the claim made must be reduced. The tenants did suffer a loss of the bedroom and I find the most reasonable method of calculating the loss is by floor space, valued at 5.4% of rent owed for the twenty-four days the restoration took place; (\$69.04/day X 5.4% X 24 days = \$89.52)

Residential Tenancy Branch policy suggests that an arbitrator may award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. Therefore, I find that the disturbance caused by the fans over a period of twenty-four days, plus the need to utilize the 3rd bedroom for the baby, entitles the tenants to nominal compensation in the sum of \$100.00. This amount takes into account the period of time the tenants might have accepted the use of a hotel; which would have mitigated the claim made.

There was no dispute that for a short period of time the use of the laundry room was restricted, but there was no evidence before me that the loss resulted in anything but a temporary inconvenience to the tenants. I find the same level of loss in relation to the loss of the kitchen; a temporary inconvenience. From the evidence before me I find that this temporary inconvenience does not support a claim for compensation.

Therefore, the tenants are entitled to compensation in the sum of \$189.52.

The balance of the claim is dismissed.

As the application has some merit I find that the tenants are entitled to recover the \$50.00 filing fee from the landlord.

The tenants are entitled to rent abatement in the sum awarded, \$239.52, which may be deducted from the next month's rent due.

There is no need to issue any Order of compliance to the landlord.

Conclusion

The tenants are entitled to compensation in the sum of \$189.52.

The balance of the claim is dismissed.

The tenants are entitled to filing fee costs.

A total of \$239.52 may be deducted from next month's rent due.

This decision is final and binding and 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 26, 2015

Residential Tenancy Branch