



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order for a rent reduction – Section 65.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. During the Hearing the Tenant clarified that no rent reduction was being sought for ongoing problems with the unit and that the compensation being sought could be provided in the form of a rent reduction.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The following are undisputed facts: The tenancy states on July 1, 2014. Rent of \$1,675.00 is payable monthly on the first day of each month. On September 28, 2014 the Tenant’s unit was affected by a flood from the next door unit. Repairs were started immediately with the use of dryers and then humidifiers over a period of 15 days followed by the replacement of the flooring throughout the unit. The repairs were completed by November 27 or December 1, 2014. The Tenant was required to be out of the unit completely for 6 days during this period.

The Tenant states that in addition to the above the Tenants were told to move their all their belongings into the den and that as a result lost use of the unit space for 26 days.

The Tenants claim as follows:

- \$418.75 as reimbursement of ½ the rent for 15 days during the use of dryers and humidifiers;
- \$362.91 for the period when all belongings were in the den;
- \$335.00 for the loss of the entire unit for 6 days; and
- \$14.59 for the increased cost of electricity for the fans and humidifiers.

The Tenants withdraw their claims for legal fees and registered mail costs.

The Landlord states that while the fans and humidifiers were not silent over the 15 days, the Tenants did not lose as much space as the use of the fans and humidifiers were used interchangeably. The Landlord also states that he did not tell the Tenants to move their belongings into the den and that this was done on the instruction of the strata's restoration company and that the Tenants moved their belongings approximately a week earlier than was necessary. The Landlord states that he was in close communication with the Strata during the repairs. The Landlord states that all essential services were provided to the Tenants during the repairs and that the Tenants should have used their insurance to cover their losses. The Landlord disputes the amounts claimed by the Tenant's as being in excess of their losses.

The Tenant states that they moved their belongings as soon as they were told by the company to do so and that the Landlord only told them that it did not have to be moved for another period of time after the move was completed. The Tenants states that they were not going to replace the belongings and then move them again a week later as it took a full day just to move the once.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the Tenant's unit was disrupted by a flood and required repairs between September 27 and approximately December 1, 2014, I find that the Tenant has substantiated that they did not receive the value for the unit due to the repairs to the unit. I also accept that the Tenants suffered a loss of enjoyment from the repairs but did mitigate their losses by taking time away from the unit during the repair⁵ period. I do not find the Landlord's suggestion that the Tenant's should have used their own insurance to cover the loss of the unit while the Landlord continued to collect full rent and where the damage or loss was not the fault of the Tenants.

Considering that the total length of time for the disruption was approximately 2 months, regardless of when or how long the belongings were stored in the den, I find that the amounts claimed by the Tenants are a reasonable estimation of the value of their losses either from the noise of repairs or the moving of belongings and essentially living out of one room. I find therefore that the Tenants are entitled to compensation for the loss of enjoyment and loss of value in the unit in the claimed amount of **\$1,131.16**. I include the reasonably expected increased costs of electricity to operate the fans and humidifiers in this amount. While I provide a monetary amount for this entitlement, the Tenants may satisfy this amount by reducing future rent payable up to this amount.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,131.16**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 13, 2015

Residential Tenancy Branch

