



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OLC, MNDC, LRE, PSF, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy, for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for a an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities required by law; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlords for the cost of this application.

At the outset of the hearing the tenant advised that they are no longer residing in the rental unit, and therefore, the tenant withdraws the application with the exception of her claim for monetary compensation and the filing fee.

The tenant 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 tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of the landlord's evidence the landlord confirmed receipt of all the tenant's evidence with the exception of the final documentary evidence submitted to the Residential Tenancy Branch. This last piece of evidence has not been considered pursuant to the rules of procedure 3.17 concerning late evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2014 for a fixed term tenancy which was due to expire on October 31, 2015. The tenancy ended on April 01, 2015 after the landlord obtained an Order of Possession for unpaid rent. Rent for this unit was \$2,090.00 due on the 1st of each month.

The tenant has claimed \$10,520.00 comprised of the following:

Item 1. For vacating the unit due to restoration work	\$1,340.00
Item 2. Partial rent paid for November and December	\$2,090.00
Item 3. Mental Anguish	\$2,090.00
Item 4. Endangering health and safety of tenant and her son	\$5,000.00
TOTAL	\$10,520.00

The tenant testified:

Item1. The tenants had to vacate the rental unit while a major renovation took place to replace the flooring in the unit after a flood from the toilet. This renovation took 10 days to complete. The landlord offered the tenant the use of the guest suite in the building but as that suite only had one bedroom and the tenant's son is 18 years old it was not appropriate for the tenant to share the bedroom with her son so they could not use this suite. The landlord suggested that the tenant or her son still used the second bedroom in the unit which was not affected by the renovation; however, the bathroom and kitchen could not be used in the unit and this was not a viable living situation. The tenant also had concerns about her son being in the unit alone with strange men due to his sexual orientation.

The landlord did not offer to put the tenant and her son into a hotel while the renovation work took place so they had to go and stay at the tenant's daughter's home. This required the tenant

and her son having to travel over an hour and a half each way to work. The tenant agreed the landlord did provide \$750.00 for the days out of the unit as compensation but even with the tenant's travel agent's discount this was not enough money to pay for a hotel in the local area. The tenant and her son left the unit on January 17, 2015 and returned on January 27, 2015. The tenant sought to recover one month's rent for their inconvenience and has reduced this by the \$750.00 already received from the landlord.

Item2. The tenant did not have full use of the rental unit due to the toilet flooding part of the unit on November 07, 2014. This recurred again on two other occasions on November 11 and November 13, 2014. The tenants could not fully unpack their belongings as they were concerned they would have to repack everything due to the damage to the floor. The toilet had been running when the tenant moved into the unit and this was reported to the landlord. It was treated at that time as a non-emergency repair and later flooded part of the unit. The tenant and her son had to clear up the flood water and later the landlord came and provided a wet/dry vacuum and towels. There was water lying under the flooring. On November 11, 2014 the second flood occurred where everything that had been in the toilet came back up. The tenants were cleaning up raw sewage and black water. The landlord was again notified. The tenants had to use the toilet in the pool area of the building and the guest suite. The third flood was more minor and again the tenants had to clean up after this smaller leak. The third leak was also reported to the landlord. The tenants lost their quiet enjoyment of the rental unit over this period of time. The toilet and the flooring in the living room, hallway and master bedroom all had to be replaced. This devalued the tenancy and the tenants seek compensation of \$2,090.00.

Item3. The landlord continually harassed the tenant by texting the tenant while she was at work, when the tenant did not respond the landlord then followed up with an angry email. The tenant explained that she is unable to text or email while at work. The landlord also served the tenant with hearing documents in the tenant's place of work and in front of clients and staff. The landlord exhibited inappropriate behavior which upset a client and staff members. The tenant asked the landlord to step outside the store but the landlord refused and kept saying "you've been served". The landlord has also done this before when the tenant was working with a client the landlord interrupted them and served papers to the tenant in front of her client. This action on three occasions could have jeopardized the tenant's job. The tenant refers to a letter from a staff member verifying the landlord's behavior. The tenant referred to emails from the landlord in

which the landlord describes the tenant as a hostile tenant. The tenant testified that this has caused mental anguish and affected the tenant's sleep and life.

Item4. The landlord has endangered the tenant and her son's health and safety. The landlord did not call a restoration company to deal with the flood water which was contaminated. This contamination was not sanitized correctly and was left to the tenant to clear up. Any water lying under the floors would be considered black water. The tenant's son has a fungal infection on his feet from standing in contaminated water while cleaning up the flood and the tenant has experienced stomach issues. The tenant felt the landlord made it the tenant's responsibility to deal with the flood water instead of dealing with it through a restoration company. This resulted in the tenant and her son living in a contaminated environment where bacterium is air bourn for three months. The work was not completed until mid-January, 2015.

The tenant agreed that around December 13 to January 01, they did request that they not be removed from the unit as they wanted to enjoy the Christmas holidays and the tenant's birthday without disruption.

The landlord disputed the tenant's claims.

Item1. The landlord testified that the tenant was not put of the unit for 10 days; the tenant packed her belongings on January 18 and the original plan was for the tenant to be out of the unit until January 26; however, the work was ahead of schedule and the landlord contacted the tenant and said there was only nominal cleaning to be done. The tenant could return to the unit sooner on January 23, 2015 if they were prepared to do the cleaning or they could stay out until January 26 if they wanted the restoration company to do the cleaning. It was the tenant's choice to return to the unit on January 23. The landlord testified that she does not have evidence to confirm this.

The landlord testified that the tenant should have been compensated \$68.00 per day based on six days they were out of the unit to an amount of \$408.00; however, the landlord agreed to pay them \$750.00. The landlord testified the tenant or her son could have slept in the one unaffected bedroom in the unit and used the bedroom in the guest suite. The tenants had full bathroom access and it was the tenant who requested a delay to the work over the Christmas holidays.

Item2. The tenant has provided no evidence to show that they lost an essential service as everything was still functional. There was no contamination in the unit at any time. There was no requirement for the tenant not to unpack their belongings and they could have done so at any time. The tenant did not make any statement to the landlord claiming the flood water contained raw sewage. It was a water escape from the toilet tank. When the tenant notified the landlord and the landlord attended at the unit there was evidence of water and water remained evident under the flooring. The landlord then provided the wet vac and towels to assist the tenant. The second flood was caused by a blocked toilet bowl and it has not been determined how this occurred as there are conflicting opinions. No water left the bathroom during the second flood and was contained to the tiled bathroom floor. The tenant has not mentioned to the landlord that her son was standing in raw sewage. The landlord testified that there was no evidence of the third flood occurring. On November 11, the landlord had the plumbers back again and the hardware in the toilet tank was replaced. The flood occurring on November 18, 2014 was described by the tenant as a minor flood in an email to the landlord.

The landlord referred to the video evidence provided for this hearing which was taken by the tenant's son and shows all plumbing is now functional. The tenant reported a minor toilet flood on November 18, 2014 and did not appear to have had a problem sending a text message from work to her son to arrange access to the unit.

The landlord testified that the tenant assumed it is contamination from sewage; however, the tenant was warned previously about fecal matter in the living room from the tenant's pets. The tenant was asked to provide evidence showing the flood water was contaminated water. If it was the case that the unit contained bacteria why did the tenant add another occupant to the unit in mid-December, 2014. This does not show that the tenant had concerns about contamination.

The landlord testified that when the tenant raised the issue about black water contamination in the unit in mid-December, the landlord contacted the insurance company, the restoration company and the flooring company. They all met at the unit on December 29, 2014. The insurance adjuster said they could test the carpet in the master bedroom for contaminants but suggested that as the tenant also had pets it would likely show contamination so the best course of action would be to just replace the carpet.

Item3. The landlord disputed harassing the tenant at work, or by text and email. The landlord referred to the text messages and emails provided in documentary evidence and disagreed that these are harassing. The tenant had issues with anyone being in the unit without the presence of her son or the tenant. The tenant was sending text messages to her son to arrange access to the unit. The landlord testified that she was not harassing the tenant but rather just trying to get the work done in the unit.

Item4. The landlord testified that she served the tenant in person with hearing documents when the landlord had applied for a Direct Request Proceeding due to unpaid rent. The landlord testified that it is her right to serve the tenant in person and she is entitled to inform the tenant that she has been served. The landlord agreed that the second time the tenant was served the landlord did reach over a client sitting at the tenant's desk but the landlord spoke quietly and informed the tenant she had been served. After the tenant moved out the landlord did not have a forwarding address so had to continue to serve the tenant in person.

The landlord draws attention to inconsistencies in the tenant's documentary evidence in which the tenant stated she had faxed the landlord. The landlord testified this is untrue as the tenant has never been provided with the landlord's fax number. The tenancy ended on March 18, 2015 by Order of Possession but the tenant did not vacate the unit until April 01, 2015. The tenant stated the flood water on November 18, 2014 went throughout the unit; however, it was just in the bathroom and hallway.

The tenant testified that in regard to the length of time they had to be out of the unit. The tenant was out for 10 days and the landlord has no evidence to show they returned to the unit after six days. The tenant testified that they knew the flooring would have to be replaced and so they did not unpack their belongings as they did not want to have to pack them all again. The tenant testified that they also had issues with the heating in the living room. The heater did not work and the tenant was instructed to unplug it and to just use the fireplace. The tenant testified that the heater should have been repaired and the tenant given a choice to use that or the fireplace.

The tenant testified that the landlord has testified that on November 11, 2014 there was no mention of black water being present; however, the landlord noted that on November 11, 2014

there was a sewage backup with everything that was in the toilet. Therefore the landlord knew there was raw sewage and black water contamination. It was the landlords own plumber that said that anything that came out of the toilet bowl was considered to be black water. The landlord indicated that the tenant did not mention black water to the insurance adjuster; however, the landlord had specifically told the tenant not to discuss anything with the insurance adjuster.

The landlord testified that the tenant just needed to turn the breakers on for the other heaters and there is sufficient heat from the fireplace to heat the living room. When the tenant first complained about the heaters the landlord went to the unit on December 24, 2014. The tenant did not want the landlord there so the landlord returned on December 29, 2014 and flipped two breakers on. The tenant also had furniture against the heaters in the living room which would have made it unsafe to use the heaters. The landlord testified that there was only water during the first flood and it was many weeks later that the tenant complained that there was black water.

The landlord testified that she had advised the tenant not to communicate with trade's people due to miscommunication and confusing information. The tenant was told that all communication must go through the landlord.

The tenant asked the landlord if the landlord asked them to withhold information to the plumber about the toilet continually running. The landlord responded no. The tenant asked the landlord if the landlord said they had the use of the bedroom in the unit while renovations took place and did they also have use of the bathroom. Did the plumbing work happen during the renovation? The landlord responded no. The landlord testified that she thinks the plumbing was done after the renovation and the tenant was compensated regardless. The toilet worked properly the whole time. The tenant testified that there was not a fully functioning toilet in the unit from November 07, 2014 until it was replaced. If it was fully functioning it would not have kept flooding.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I will deal with each section of the tenant's claim.

Item1. When a tenant has had to leave the rental unit while renovations or repairs take place; the landlord is responsible to compensate the tenant for any costs incurred or for a loss of quiet enjoyment of the rental unit. I am satisfied from the evidence presented that the tenant and her son had to leave the rental unit while the repairs took place. I am not satisfied with the landlord's claim that the tenant and her son could have used the one unaffected bedroom in the unit and the guest suite as the tenant and her son did not have full use of the bathroom and kitchen in the unit and would have had to have used a common area kitchen in the building. I am further satisfied that this occurred over a 10 day period. It is my decision that the tenant and her son did have to stay elsewhere and incurred additional costs getting to and from work. I do find; however, that the tenant and her son were inconvenienced for 10 days and not the entire month and therefore find the amount of compensation of \$750.00 already paid is adequate for the loss of quiet enjoyment of the rental unit considering that the tenant did not book into a hotel and incur additional costs.

Item2. The tenant has provided sufficient evidence to show that the toilet flooded three times. The first time affected the bathroom, hallway, living room and master bedroom; the second flood affected the bathroom and contained raw sewage and the third flood was minor in nature. The landlord did act in a timely manner to provide a wet/dry vac to the tenants along with some towels; however, I have concerns that the landlord did not contact a restoration company after the first or second flood occurred so they could assess any damage to the unit and determine the cause of the flood and carried out remedial repairs and treatments to sanitize the area. With this in mind I find the tenants were left to deal with these floods one of which contained raw sewage. The tenant lost the use of the full unit as they could not be reasonable expected to unpack all their belongings while the damage was assessed and dealt with. The tenant testified that this spanned from November into January before the work was completed in the unit. The tenant would be entitled to receive some compensation from the landlord; however, the tenant has an equal obligation to mitigate the loss by allowing the landlord access to the unit to have any work performed to complete the repairs in a timely manner. The tenant agreed she asked the landlord to postpone any work until the New Year and therefore this extended the time it

took for the repairs to be completed. I therefore limit the tenant's claim for compensation to **\$1,500.00**. The tenant will receive a monetary Order for this amount pursuant to s. 67 of the *Act*.

Item3. The tenant seeks compensation for mental anguish and has testified that the landlord has sent harassing text messages and emails. I have reviewed the text messages and emails and do not find the content to be viewed as harassing in nature. The tenant also claimed that these were sent to the tenant while she was at work. There is no provision under the *Act* to dictate the times when a landlord can communicate with a tenant. It is the tenant's choice when she replies to the text messages and emails and if she is unable to do so while she is at work then the tenant may do so when it is convenient to the tenant. While I appreciate the landlord needed a quick response to the text messages and emails to get work organised in the unit, if the tenant is unable to respond straight away then the landlord could have simply posted a 24 hour notice of entry to the door of the rental unit stating the time date and reason for entry and then entered with or without the tenant being present.

The tenant has also testified that the landlord served the tenant at her place of work and could have jeopardised the tenant's job. Again a landlord is entitled to serve a tenant in person and there is nothing in the *Act* that prohibits that service from taking place at the tenant's place of work. From the evidence provided I find the landlord may have acted in an overly zealous manner and should have gone outside with the tenant when requested but I do not find this can be construed as harassment when the landlord is carrying out her lawful right to serve the tenant. This section of the tenant's claim is therefore dismissed.

Item4. The tenant testified that the landlord endangered the health and safety of the tenant and her son by not using a restoration company to deal with the contaminated water and bacteria after the flood occurred. The tenant has the burden of proof in this matter to show that her son suffered from a fungal infection on his feet and the tenant suffered stomach issues that were caused from the contaminated water and not caused from another source or previous health condition. The tenant has presented insufficient evidence to meet the burden of proof in this matter. While I accept that the landlord should have called in a professional company straight away to assess the unit to ensure there was no contamination or to clean up any contaminated areas, there is insufficient evidence to show that air borne bacteria or other contaminants remained in the unit after the tenant and her son had cleared up the black water. Furthermore I

find if the tenant had been so concerned about air borne bacteria or contamination then the tenant would not have delayed the work over the Christmas holidays and invited a third person to stay with the tenant in the unit. This section of the tenant's claim is dismissed.

With regard to the tenant's claim concerning the heaters, there is insufficient evidence from the tenant to show the rental unit was not adequately heated. As the tenancy has since ended I am not prepared to issue any repair orders or compensation reading this matter.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,600.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: April 29, 2015

Residential Tenancy Branch

