Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

All of the verbal testimony and documentary evidence provided to me have been considered in making this decision.

Issue(s) to be Decided

Are the tenants entitled to compensation from the landlord in the amount claimed?

Background and Evidence

The tenancy commenced in July 2003 and the tenants are currently required to pay rent in the amount of $715.00 per month. The rental unit is located in an apartment building. The landlord employs building managers to manage the building.

On October 6, 2014 water was found on the bathroom floor of the rental unit. The building manager was notified by the tenant. The manager attended to the unit, advised the tenants to refrain from using the shower for the time being, and called in a plumber. Initially, the source of the water leak was not determined although it was suspected to be coming from behind the wall. A contractor was called in and it was determined that the source of the water infiltration was attributed to a lack of grout between the bathroom tiles in the adjacent rental unit. Extensive repairs were required to remediate the water damage and mould.
Repair work was set to commence the morning of November 4, 2014. Without a functional bathroom the tenants went to a motel the evening of November 3, 2014 and remained there until they were able to return to the rental unit on November 11, 2014.

The tenants carry tenant's insurance and initiated a claim through their insurance company; however, the insurance company denied coverage. The letter issued by the tenants' insurance company on December 15, 2014 provides that the tenants' policy does not cover damages or loss arising from:

- Gradual deterioration, dampness of atmosphere, rust or corrosion, wet or dry rot, condensation, fungi or spores, or extremes of temperature
- continuous or repeated seepage or leakage from a plumbing, heating, sprinkler or air conditioning system, waterbed, aquarium, swimming pool, hot tub or domestic appliance.

The tenants notified the landlord that their insurance company denied their claim and requested resolution from the landlord before filing this Application. A mutual resolution was not reached before this hearing.

The motel room cost the tenants $1,345.05 including taxes and levies for nine nights. The tenants seek to recover this amount from the landlord as well as $138.23 for six restaurant meals for two people. The tenants' representative submitted that the tenants did their best to eat as many meals in the motel room but that it was difficult to do so. The tenants request to recovery the sum of $1,483.28 from the landlord was supported by receipts.

The tenants are of the position that the landlord was negligent by not inspecting or maintaining the property sufficiently and that as a result of the landlord's negligence a major repair was necessary which displaced the tenants due to no fault of their own.

The building manager was asked to describe their inspection and maintenance activities at the property. The building manager testified that they respond to tenant's requests for repairs and that inspections of smoke detectors are performed once per year.

The landlord's agent submitted that it was the negligence of the tenants in the adjacent unit that caused the water damage since those tenants did not report the missing tile grout to the landlord. The landlord pointed to a letter written by the contractor on January 19, 2015 whereby the contractor described the damage in the subject rental unit and the direct reason for the damage as being the negligence of the neighbouring tenants by "not bringing the bad condition of the tile around the tub/shower to the attention of the management staff…" The contractor's letter was provided to the tenants to pass along to their insurance company. It is undisputed that the tenants did pass on the contractor's letter to their insurance company and that the tenants' insurance company did not reverse their decision to decline coverage.

The landlord submitted that the adjuster for the tenants' insurance company had not been in contact with the landlord. The tenants' representative was of the position that the adjuster had contacted the landlord.

The landlord stated that the abutting tenant's insurance company settled with the landlord for their negligence. The landlord provided a copy of the settlement cheque and covering letter issued to the landlord by that insurance company although the settlement amount was obscured and not disclosed.

The landlord's agent suggested that it is the tenants' insurance company that is looking for a reason to not pay out the tenants' claim and opined that they should pay since the abutting tenant's insurance company did. Alternatively, the landlord suggested that the tenants' insurance company could subrogate the claim by proceeding against the neighbouring tenants' insurance company.

Analysis

The tenants' claims that are before me have been made on the basis the landlord was negligent by failing to inspect and maintain the property. Residential Tenancy Policy Guideline 16 provides policy statements with respect to claims in damages made under the Act. Negligence is addressed in the policy guideline in the section entitled "Claims in Tort" which I have reproduced below.

> **Claims in Tort**
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> A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.
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> [my emphasis added]

Negligence is a failure to act in a manner that a reasonably prudent person would in the same or similar circumstances.

As the applicants, the tenants have the burden to prove the following, based on the balance of probabilities:

1. that the landlord violated a duty to the tenants under the Act, regulations or tenancy agreement;
2. that the landlord's negligent conduct caused the tenants to suffer damages or loss;
3. the value of the tenants' damages or loss; and,
4. that the tenants took reasonable steps to minimize their damages or loss.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law and is suitable for occupation, having regard for its age, character and location. I find that water leakage that results in a major repair to the tenants' only bathroom is a breach of this section of the Act. While I am satisfied the landlord acted reasonably in addressing the problem once the landlord became aware of it, I proceed to consider whether landlord was negligent by failing to detect the problem sooner or took reasonable precautionary measures.

In this case, I accept the evidence before me that the water damage was due to missing bathroom tile grout in the adjacent rental unit. The landlord did not provide an explanation as to the reason it was missing but merely pointed to the neighbouring tenants not reporting the issue to the landlord. Nevertheless, I take note that tile grout is subject to deterioration with age and use. The landlord made no submissions as to the last time the landlord inspected the grout or the bathroom in the adjacent rental unit. Further, since the building manager testified that the manager only responds to repair issues raised by tenants it is conceivable that the bathroom of the adjacent unit was last inspected by the landlord at or around the time that tenancy began. The landlord did not provide any submissions as to when that tenancy began.

Given that building components are subject to deterioration and failure with age and use and considering this is an apartment building occupied by many tenants, I find it reasonable that in these circumstances a landlord would inspect its rental units at reasonable intervals so as to prevent harm to the property and tenants, including tenants in other units. This same concept applies to ensuring smoke detectors are in working order which the landlord does inspect annually. However, it is evident in the case before me that the annual smoke detector inspection is not sufficiently thorough to detect other maintenance issues and as a consequence the unreported maintenance issues are left to worsen.

While the neighbouring tenants had a duty to report apparent maintenance issues to the landlord, I find it to be unreasonable that the landlord solely rely upon tenants to bring maintenance issues to the landlords attention or be responsible for protecting other tenants from suffering from harm that may result from that tenant's failure to notice or report maintenance issues. Furthermore, I find that in choosing to not perform its own maintenance inspections at reasonable intervals during a tenancy and solely relying upon tenants to report maintenance issues that it is foreseeable consequence that this practice would result in issues such a water infiltration to go on for long periods of time and eventually affect other tenants. Therefore, I find the landlord was negligent in failing to inspect the adjacent rental unit at reasonable intervals and that the consequences of such were reasonably foreseeable.

Having found the landlord negligent which resulted in the loss of use of the tenants' only bathroom and considering I heard no evidence that the landlord offered the tenants alternative bathroom facilities, I find the tenants acted reasonably by renting a motel room while the repairs were underway. I also accept that living in a motel for nine nights is less accommodating to preparing meals at home with all of one's appliances, kitchen tools and food stuffs at the tenants' disposal and that claiming for six modest restaurant meals is reasonable.

Finally, upon review of the correspondence between the parties and from the tenants' insurance company, I am satisfied the tenants acted diligently by carrying tenant's insurance and initiating a claim to cover their losses and communicating to the landlord their dealings with the insurance company. The insurance company provided its reasons for finding the peril was excluded from coverage and the landlord did not contradict that the peril was due to the reasons as described by the tenants' insurance company. As such, I am left unsatisfied that subrogation was an option as suggested by the landlord. Further, I note the landlord settled with the adjacent tenants' insurance company after the tenants put the landlord on notice as to their claims. Certainly, the landlord was at liberty to take the tenants' claims into account in settling.

In light of all of the above, I find the tenants established an entitlement to recover their additional living expenses, as supported by their receipts, from the landlord and I award the tenants the amount requested in its entirety. I further award the tenants recovery of the $50.00 filing fee they paid for their Application. Accordingly, I provide the tenants with a Monetary Order in the sum of $1,533.28.

The Monetary Order may be satisfied by payment from the landlord to the tenants. Alternatively, the tenants are authorized to withhold rent until such time this sum is recovered.

Conclusion

The tenants have been provided a Monetary Order in the total sum of $1,533.28 to serve and enforce upon the landlord as necessary. Alternatively, the tenants have been authorized to withhold rent until such time this sum has been recovered from 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: May 22, 2015

Residential Tenancy Branch