



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, including a reduction of past or future rent. Both parties appeared and had an opportunity to be heard.

Partway through the hearing the landlord had to leave the hearing to attend to an emergency in her workplace. She advised that she would not be able to return but her witness, who is her cousin and property manager, would provide all the evidence on her behalf and would represent her in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced May 1, 2013. The monthly rent of \$2000.00 is due on the first day of the month.

The rental unit is an apartment style strata unit located on the sixteenth floor of a high rise building. The unit is approximately 800 square feet. It contains two bedrooms, two bathrooms, a sun room, and a forty square foot storage room. The storage room is carpeted.

The tenants are an older couple who moved out of a much larger home into this unit. The female tenant is retired from her profession; the male tenant still manages some properties from their home.

They use the sunroom as an office. They keep items that they need to access regularly for business or for travel in the storage room such as paperwork, luggage, linens and tools. Many of these items are kept in a wall unit. The tenants have additional storage space in the building but they testified that it is full.

On the afternoon of Saturday, June 20, the tenants noticed moisture in the storage room. They called the building manager who made all the arrangements for a plumber. A plumber came to the unit that evening and spent several hours trying to locate the source of the leak. He cut several holes in the storage room walls but finally gave up around midnight.

The building manager had a different plumber come on Monday morning. This plumber was familiar with the building and with previous leaks in it. He found the problem within half an hour.

The problem was a pinhole leak in the common area of the strata. The strata subsequently acknowledged in writing that it was responsible for all the repairs.

The plumber cut a hole in the wall from the hallway and put in a temporary clamp. In the course of the repairs to the leak, the firewall was cut.

The storage room and an adjacent coat closet were the only areas inside the strata unit that were affected by the water leak.

The restoration company was called and they arrived that day. They opened up the walls, removed the baseboards, pulled back the carpet, removed the underlay, sprayed, and installed blowers. At first the blowers were scheduled to be in the unit for three days but on Wednesday, June 24, the restoration company decided to leave the blowers in for one more day. They were removed on Thursday, June 24.

By this time the tenants had had enough of the noise and the smells so they checked into a hotel for the night of June 24. The cost of the hotel was \$256.30.

On Friday, June 26 the restoration company wrote the tenants an e-mail confirming that the emergency phase of the process had been completed and laying out the next sequence of events. The first step would be the creation of the scope of work by the restoration company. Once the scope of work was created it would be priced out by a project manager.

The tenants were advised that if this was an insurance claim – as it was – some time would be added to the process if the insurance adjuster wanted to do a walkthrough of the site. The tenants were also advised that: “In addition, sometimes the Insurance Adjuster will require a second quote as part of the Insurance Company’s process for establishing the amount of the claim. This could also take up a few weeks.”

The restoration company went on to explain that: "The last step will be that our Construction Division will be in touch with you to schedule the repairs. This will happen after the authorization from the Property Manager/Strata once the Insurance Adjuster has forwarded the estimates to them. The entire process as shown below can range between 7 to 12 weeks."

In the flow chart provided by the restoration company the time set aside for completion of the repair work was ten to thirty days.

The repairs were approved by the strata on July 7.

The tenants had to remove the contents of the storage room and the closet on June 22 so the emergency clean-up and the repairs could be done. These items were then stored all over the unit until the work was completed. Of course, this was disruptive and inconvenient. Particularly difficult for the tenants was the fact that the male tenant was trying to work on some business related projects while his papers and his home was in a state of upheaval.

The challenge with these repairs is that they are done in so many separate stages. As the tenants' submission describes it, after the blowers were removed it was a week before the firewall was repaired. A few days later the drywall was installed. A day after that the drywall is sanded and painted. A few day later the carpet is reinstalled. Two days later the mouldings are installed.

The repairs, but not the cleaning, were completed on July 23.

The tenants put everything back into the storage room on July 28. Sometime after that they were contacted by the cleaners. They declined that service because they did not want to unpack and then repack the storage room again.

The tenants were of the opinion that the carpet should have been removed from the outset. The male tenant argued that if the carpet had been removed it would not have taken as long as it did to thoroughly dry the area. He also argued that the blowers, if necessary at all, could have been used from the hallway. It was his opinion that if the carpet had been removed the drywall in the storage area could have been repaired the following day.

The tenant also argued that the landlord should have been more assertive in negotiating a "buy-out" from the strata or its' insurer so she could have taken over the repairs and

completed them in a shorter time period. The landlord's agent testified that they were prepared to accept a "buy-out" if one had been offered by the insurance company but it never was.

Analysis

This is a claim in contract by the tenants against the landlord. 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."

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

In determining the amount by which the value of the tenancy has been reduced, an arbitrator must take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises and the length of time over which the situation has existed.

Although a substantial portion of the tenants' evidence and submissions were devoted to attempting to establish that the landlord had not responded quickly enough or energetically enough to their situation, when the measure of damages is the extent and duration of the disruption to the tenancy, any fault or lack of effort on the landlord's part, if any, is not particularly relevant.

The area affected by the water was only a small proportion of the unit but the area affected by the displaced items from the storage area was considerable larger. The tenants' photographs show a crowded living and dining room, second bedroom, second bathroom and hallway. There are no photographs showing crowding in the master bedroom, master bathroom or sunroom. Of course, the tenants had use of basic amenities such as a bathroom and a kitchen throughout this time period. In addition,

the tenants would have had their schedule disrupted by the need to accommodate all of the workmen who came and went.

I find that the period of disruption caused by this water leak was one month and, based upon the factors set out in the preceding paragraph; I find that the value of the tenancy was reduced by 75% for that month. Accordingly, I award the tenants \$1500.00 for the loss of value of the tenancy.

I also award the tenants the cost of one night at the hotel - \$256.30.

Finally, as the tenants were substantially successful on this application they are entitled to reimbursement of the sum of \$1806.30.

Conclusion

The tenants have been awarded a monetary order in the amount of \$1806.30. Pursuant to section 72(2) 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: September 30, 2015

Residential Tenancy Branch

