



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP RP OLC MNDC RR FF

Introduction

Only the tenant attended and gave sworn testimony that he served the Application for Dispute Resolution by registered mail. He served it to the landlord's address given in the two year fixed term lease (in evidence). A flood occurred in the premises and he served a letter to the same address on December 10, 2015 and the landlord signed for it. However, registered mail on December 13 and 14 was refused with the mail person being told the recipient was unknown or moved. The tenant said the landlord is probably refusing the served documents because he knows the damage is so extensive and he does not want to deal with it. Based on the evidence provided, I find the landlord is legally served with the Application/Notice of Hearing by registered mail according to section 89 of the Act to the service address he provided on the tenancy agreement and the hearing will proceed. The tenant requests orders pursuant to the *Residential Tenancy Act* (the Act) as follows:

- a) That the landlord do emergency repairs pursuant to section 33;
- b) That the landlord repair and maintain the property pursuant to section 32;
- c) Compensation and a rent rebate for loss of personal property and loss of use of a portion of the property;
- d) That the two year fixed term tenancy agreement be terminated and converted to a month to month lease; and
- e) To recover filing fees.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act and they are entitled to orders that the landlord do necessary repairs and to compensation for losses suffered due to the landlord's failure to repair? Should the lease be converted to a month to month lease?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in May 2015 for a two year fixed term. Rent is \$2985 per month. The tenant described the home as approximately 1200 sq. ft. on the main floor where they have most of their bedrooms, kitchen and living room and approximately 800 sq. ft. in the lower floor (basement area).

The tenant recounted the facts that occurred in December 2015. December 5 or 6, 2015, they saw a flood in the basement, the landlord attended with a handyman, did not find the problem and said they would come next day with an emergency pump to remove the 7 to 8 inches of water that had accumulated. The male tenant arrived home and tried to convince the landlord unsuccessfully to have a plumber attend to assess the problem. On December 7, the handyman came with a pump but the water came in as fast as it was pumped out. There was no hot water also. The landlord said a sump pump would be installed. On December 9, 2015, the basement flooded again with 8 inches of water and the handyman began installing the sump pump. The water was pumped out, the boiler was serviced and hot water was restored but the basement was left soaking wet with no drying or cleanup. The tenant tried without success to get information from the landlord for his insurer, to get an emergency contact number, to get reimbursement for a plumber's charge (\$128.10 paid Dec. 6) and to get cleanup and drying done to prevent further damage and mould. However nothing was done about drying the basement. His furniture and many books are destroyed and he has lost use of that space.

The tenant submitted an insurance claim for his contents destroyed by the flood. The insurer had a plumbing firm attend on December 10, 2015. They investigated and found it was a drain tile issue. A hole was broken in the slab with a new sump pump installed but they saw an old sump pump on site indicating past problems. They used a camera to inspect the drainage and found some of it was not clear and the outflow line was also restricted. A photograph of the failed pump was included in their report. Because of their investigation, the tenants' insurer refused the tenants' claim (it was due to landlord's lack of maintaining drain tiles) and pointed out that it was important for the landlord to act promptly to repair the water damage arising from their claim as it can cause mould contamination with further property damage and possible health issues. The tenant said the landlord refuses to do anything except set up a small fan. He said the handyman told him the basement floods every winter and some prior tenants said there had been a flood when they were there.

The tenant requests compensation as follows:

1. \$4900: Loss of murphy bed & desk bought November 2013
2. \$90 + \$128.10 paid to plumbers to fix a broken mechanism on a toilet and for an emergency visit due to the flooding. The landlord has refused to pay these bills
3. \$399: Loss of a sofa (6 years old)
4. \$209: loss of a tent (3 years old)
5. \$68.23: cleaning supplies and boxes to deal with the flood
6. \$179.99 + \$382.10: Wii Video Game System & Discs (bought 2008)
7. \$623.64 + \$1102.10: for medical texts. Both tenants are professionals and some books are clinical texts and almost irreplaceable although bought from 2007 up to the present.
8. \$895 approximate month reduction of rent since December 2015 due to loss of space (not useable 800 sq. ft of 2000 sq. ft) – 40% of space.
9. \$599: estimate for junk removal – at least a full load as murphy bed etc.
10. \$50 month for extra hydro charges due to sump pump running almost continually since December 2015.

Included with the evidence are receipts or estimates for the amounts claimed, photographs showing basement damage, hole in floor, broken sump pump, water damaged books and murphy bed. Included also is an audio recording of the tenant's attempt to inform the landlord of more flooding on December 13, 2015 and the landlord refusing to hear him and hanging up. A portion of the tenancy agreement is also in evidence

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 32 of the Act provides that a landlord must maintain the property in a state of decoration and repair that complies with health, safety and housing standards required by law and makes it suitable for occupation for a tenant.

Section 33 of the Act deals with emergency repairs which are defined, in part, as repairs to damaged or blocked water or sewer pipes or plumbing fixtures. I find the repairs needed to this property would be defined as emergency repairs. I am satisfied from the evidence that the tenant fulfilled the conditions for reimbursement of amounts he paid for repairs as he made several attempts to contact the landlord and gave him time to repair the items without success. I find the tenant is entitled to recover his costs of \$90 + \$128.10 for emergency repairs + 68.23 for cleanup costs due to the flood.

Awards for compensation for loss and damage are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the *Act*
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the damage or loss.

I find the tenant has satisfied the onus of proving that the landlord violated the *Act* by not maintaining the property which allowed it to flood from clogged and/or restricted drains. I find the report from the professional company hired by the insurance company supports the tenant's oral evidence that the property floods in the winter. I find the tenant's loss occurred because of the neglect of the landlord to maintain the property. I find it credible that there had been floods in the past as an old sump pump was in the basement but the main problems had not been addressed.

Due to the landlord's neglect I find the tenant sustained a serious loss which their insurer refuses to cover as they claim it occurred because of the landlord's negligence. Therefore I find the tenant entitled to recover his losses. The Residential Policy Guideline 40 assigns a useful life to elements in rented premises for the purposes of compensation and some adjustments will be made in accordance with this.

I find the tenant entitled to recover the following amounts:

1. \$3920 for the loss of murphy bed & desk as it was two years old at time of loss and furniture is assigned a useful life of 10 years.
2. 218.10 for repair bills for emergency repairs
3. \$159.60 for the remaining 40% of the useful life of the sofa.
4. \$146.30 for the remaining 70% of the useful life of the tent
5. \$68.23: cleaning supplies and boxes to deal with the flood

6. \$168.63: for the 30% of useful life remaining in the Wii Video Game System & Discs (bought 2008)
7. \$1553.16: for 90% of the loss of the medical texts. While some of the books date from 2007, I take into account that both tenants are professionals, some books are clinical texts and are used by them extensively in their careers and will likely have to be replaced where possible..
8. \$895 a month reduction of rent since December 2015 and ongoing due to loss of space. The tenant has lost about 800 sq. ft of the 2000 sq. ft in the home (which is 40%) but he claims only 30% as the basement space has some storage and is not as prime as the upstairs unit. I find he is entitled to an ongoing rent reduction of \$895 a month and compensation of \$2685 as a rebate for the full rent he has paid from December to date.
9. \$599: for junk removal – at least a full load as murphy bed etc. After viewing the photographs, I find it most probable that this is a conservative estimate for the amount of junk removal required.

I find the tenant's claims to be well supported by the detailed invoices and other objective evidence provided.

In respect to the \$50 month for extra hydro charges due to sump pump running almost continually since December 2015, I find insufficient evidence to support this amount as no utility bills and comparisons were available. I dismiss this portion of his claim with leave to reapply when such comparisons are available.

I find the tenancy agreement is essentially frustrated and the likelihood of necessary repair to be improbable given the evidence of communication in the files. As the tenant agreed, an order to repair is not likely to be successful, given the expense involved and the landlord's attitude. The evidence is that the flood has resulted in at least 40% of the home being wet and subject to further flooding. It has not been competently dried out and, as the insurer warned, may pose health risks if the tenants continue to live there with their young children. On the other hand, the landlord has indicated his unwillingness or inability to address the problem as the weight of the evidence is that the drains around the home would have to be replaced and this would be a huge expense. The tenant has requested that his fixed term tenancy be converted to a month to month tenancy so that he may seek a new home for his family and give his landlord a legal one month notice to end his tenancy. I find this is a reasonable solution and will so order.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover his filing fee of \$100 for this Application.

Loss of murphy bed/desk combination	3920
Emergency repair bills	218.10
Allowance for sofa loss	159.60
Allowance for tent loss	146.30
Cleaning supplies and boxes	68.23
Allowance for Wii Video and discs	168.63
Allowance for loss of professional texts	1553.16
Rent rebate for loss of space Dec.-Feb.	2685.00
Junk removal allowance	599.00
Filing fee	100.00
Total Monetary Order to Tenant	9618.02

I HEREBY ORDER THAT THE TWO YEAR FIXED TERM TENANCY AGREEMENT between the parties signed April 10, 2015 is converted to a month to month tenancy agreement as of this date. This tenancy may be ended with a legal one month Notice to End Tenancy.

I HEREBY ORDER THAT the tenant may reduce his rent by \$895 a month commencing March 1, 2016 until he vacates the property.

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: February 04, 2016

Residential Tenancy Branch

