



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, LRE, MNDC OLC, PSF, RP, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for a monetary order in the sum of \$2530
- b. An order that the landlord make emergency repairs
- c. A repair order
- d. An order that the landlord provide services or facilities required by the tenancy agreement or law.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Landlord on July 5, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order for emergency repairs
- d. Whether the tenant is entitled to an order that the landlord provided services or facilities required by the tenancy agreement or by law.

Background and Evidence

The tenancy began on May 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$1255 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$610 at the start of the tenancy.

The tenant claims compensation for the reduced value of the tenancy caused by a sewage flood coming from the rental unit next store. Briefly, the tenant testified as follows:

- She became aware of leakage coming from the adjoining suite at around 9:30 p.m. on May 28, 2016. The tenant immediately contacted the strata emergency telephone

number which was the only emergency telephone number which she had. A plumber attended at around midnight and worked to 3:00 a.m. to contain the leak. However, he could not gain access to the adjoining suite as no one was home.

- She was up all night until 6:00 a.m. mopping, throwing all the things that had been soaked and sanitizing before her children woke up.
- The plumber had cut the walls exposing the pipes and electrical outlets. Two days passed before anything further was done.
- On Monday, May 30, 2016 the tenant wrote to the landlord on the maintenance website. The building manager called her back in the early afternoon.
- The landlord sent a representative who came around noon. She took her children for a walk. When she returned she found two large drying machines left on, one in the hallway and the other in the washroom.
- The circuit breakers were tripped the load caused her lights to flicker.
- On June 2, 2016 the restoration workers took off the baseboards and began working in the unit next door.
- On June 4, 2016 the restoration workers gained access to look for an additional leak in the tenant's unit. Their shoes were not clean and the tenant had to clean up after they left.
- On June 10, 2016 the restoration people returned to take out the drying machines.
- On June 13, 2016 the hole in the wall was cut. The contractors put a soft cover on the opening when they were not there but failed to put a hard cover.
- The rental unit was a safety and health hazard. The walls were exposed. She was unable to cook.
- The landlord offered an empty unit to move to on a temporary basis for a couple of weeks. The tenant testified she decided against the move because their most of their belongings remained in the rental unit and it temporary unit did not have internet or cable and she could not afford movers.
- She could not do the move on her own with two small children and fasting on Ramadan.
- The tenant testified the landlord has treated her with complete indifference.
- The flooring was installed on July 22, 2016. The walls were completed on August 11, 2016. The repairs were not finalized until August 15, 2016. During much of the time the works attended 2 to 3 times a week working only partial days of 3 hours at a time.

The landlord testified as follows:

- They own 30 units in the rental property.
- The tenant failed to contain them with the emergency. The first they heard of it was on Monday morning after receiving a phone call from the strata corporation.
- Once the strata contractors are involved we are not permitted to interfere until they have completed they work.
- The tenant should have had renters insurance.
- Wires were not exposed.

- Around the end of June we offered to move the tenant to the upstairs unit which she could stay on a temporary basis. We also offered a months free internet in the temporary unit.
- We did what we could as quickly as possible.

The tenant responded with the following testimony:

- She did not phone the landlord's emergency number because the landlord failed to provide that number. The only number she had was the emergency number of the strata corporation.
- I allowed the workers in whenever they came.
- The landlord did not offer to move me nor did the landlord offer to provide internet.

The Relevant Law:

Policy Guideline #6 includes the following:

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline #16 includes the following:

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 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Residential Tenancy Act includes the following:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Analysis

The repairs have been completed. As a result I dismissed the tenant's application for a repair order and an order for emergency repairs.

The Tenant seeks compensation for the reduced value of the tenancy in the sum of \$2530 which the equivalent of two months rent. I determined the tenant is entitled to compensation based on the following:

- I determined there was a significant disruption in the enjoyment of the rental unit on the night it was discovered. The tenant was up to 6:00 a.m. in the morning mopping and cleaning
- I further determined that there was a significant disruption caused by the presence of the dryers until they were removed on June 10, 2016.
- The disruption to the enjoyment was less after that. The tenant was frustrated in that the work was not being completed as quickly as it could have been done. However, the tenant continues to live in the rental unit.
- Her enjoyment of the rental unit was sporadically affected (2 to 3 times a week) after that time. The floors were installed on July 22, 2016, the walls were completed on August 11, 2016 and all of the work was completed by August 15, 2016.

After considering all of the evidence I determined the tenant is entitled to compensation in the sum of \$600 for the period May 28, to June 30, 2016 and an additional \$400 for the period July 1, 2016 to August 15, 2016 for a total of \$1000.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$1000 in compensation for the reduced value of the tenancy.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 22 , 2016

Residential Tenancy Branch