



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; her three witnesses and the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for cleaning (after three water events); for damage to her possessions; compensation for receiving a 2 Month Notice to End Tenancy and for double the amount of the security deposit, pursuant to Sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on July 29, 2013 for a month to month tenancy beginning on August 1, 2013 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The parties agreed that the landlord had issued the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property on February 28, 2015 with an effective vacancy date of April 30, 2015 citing the rental unit would be occupied by the landlord or a close family member of the rental unit.

The tenant testified that even though she had moved most of her belongings out of the rental unit except for a box or two by the effective date of the notice she was called in for a surgery and the landlord agreed to allow her to stay to recuperate.

The landlord testified that he agreed to rent the unit to her for “use and occupancy only” and that the tenant paid rent every couple of weeks. He further stated that he never really received a full month’s rent after April 30, 2015. The landlord also testified that his niece moved into the rental unit in January 2016.

The parties agree the tenant moved out of the rental unit in November 19, 2015 after the unit was flooded and the rental unit was no longer suitable for occupation – details of which follow in this decision.

The tenant submitted that she provided the landlord with her forwarding address by letter on November 29, 2015 and that she has not received her security deposit back. The tenant seeks double the deposit be returned to her in the amount of \$900.00.

The tenant also seeks the equivalent of two months’ rent as compensation because the landlord failed to use the rental unit for the stated purpose in the 2 Month Notice to End Tenancy for Use of Property. The tenant seeks \$1,800.00 for this compensation.

In regard to the following claims, I note that the tenant submitted a substantial volume of photographic evidence for consideration and in support of her claims.

The tenant testified that in August 2014 the sewer backed up in the rental unit. She further states that as a result of the back-up she spent 18 hours cleaning up the rental unit including having to shampoo the carpets when the landlord rented her a machine but did not do the cleanup himself. The tenant seeks \$18 hours at \$30 per hour for this clean up. The tenant also seeks \$29.00 for a pro-rated reduction in the value of the tenancy for being displaced and \$100.00 for the loss of towels. The tenant seeks a total compensation of \$669.00 for this event.

The tenant also seeks compensation for cleaning up mould in the rental unit and for a flood caused by a drain problem in the kitchen during the period of January 28, 2015 to February 19, 2015. The tenant identified specifically that she worked on this cleanup for 26 hours and then an additional “countless hours” on February 19, 2015 for which she estimated another 20 hours. The tenant seeks a total of 46 hours of clean up at \$25.00 per hour for a total of \$1,150.00 plus

\$105.00 for going without a sink for a week and \$30.00 for additional laundry costs for a total of \$1,285.00.

In support of this claim the tenant submitted a letter dated February 17, 2015 to the landlord stating she had informed another party of the problems verbally on February 4, 2015 and that nothing was done about it. Included in this letter the tenant raised concerns about the safety of living in the rental unit for her and her daughter and a list of repairs requested by the tenant to be completed.

The tenant also seeks compensation for other costs and losses resulting from a flood of the rental unit following a major rain in the area on November 13, 2015. The tenant submitted that after the flood she worked at the unit to try and clean up the unit and move her belongings out of the unit. Specifically she submitted:

| Date | Hours | Rate | Amount |
|-------------------|-------------------------|-----------------------------|----------|
| November 13, 2015 | 6:30 p.m. to 12:30 a.m. | \$25.00/hour for two people | \$300.00 |
| November 14, 2015 | 8:00 a.m. to 4:00 p.m. | \$25.00/hour | \$200.00 |
| November 15, 2015 | 10:00 a.m. to 7:00 p.m. | \$25.00/hour | \$225.00 |
| November 16, 2015 | 9:00 a.m. to 5:00 p.m. | \$30.00/hour | \$240.00 |
| Total | | | \$965.00 |

The tenant explained that because the flood waters had been left for at least 72 hours by November 16, 2015 they were considered “black water” or sewage and so she charged a higher hourly rate. She also noted that on November 13, 2015 she charged for two people doing the work because she had a friend help her. She did not indicate if she had paid the friend to do the work.

The tenant also seeks \$87.00 for being displaced from the unit on a pro-rated basis for the nights November 13, 2015 to November 15, 2015. The tenant claims \$1,300.00 for loss of two queen size mattresses; a leather head board and fame; a crib; twin bed; a couch; coffee table, night stand and miscellaneous items.

The tenant's total claim for the flood of November 13, 2015 is \$2,352.00. In support of this claim the tenant submitted a typewritten account of the events after the November 13, 2015 flood.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In regard to the tenant's claim for compensation for the sewer backup in August 2014 I find the tenant has established that the landlord failed to respond in a timely manner to the tenant's complaint of the backup. I find the landlord's obligation included addressing the cause of the backup as well as restoration of the unit. I also find that the tenant was not responsible for doing any clean up.

As a result, I find the tenant is entitled to compensation for cleaning up the unit. However, as to the quantum of that compensation I find, based on the photographic evidence that 18 hours of work is excessive.

Furthermore, I am not persuaded by the tenant's claim of \$30.00 per hour primarily based on the fact that it was sewer back up and not water only. Plumbers or restoration companies, for example, do not charge a higher rate based on these distinctions. Instead, I find it more reasonable to charge a rate of \$25.00 per hour for a period of 9 hours or a total of \$225.00.

As to the replacement of towels, I find the tenant has provide no evidence to show that the towels could not have been cleaned and sanitized for future use. I dismiss this portion of the tenant's claim. I will, however, grant the tenant \$29.00 as a prorated cost for displacement

because the landlord failed to respond to have the plumbing matter dealt with the same day it occurred. In total, for the August 2014 event, I find the tenant is entitled to compensation in the amount of \$254.00.

Moving on to the issues and events of February 2015 in regard to the issue of mould, despite the tenant's submission that she informed a third party of the mould issues on February 4, 2015, I find the only evidence of her informing the landlord is the letter dated February 17, 2015.

By the time that letter was written it appears that the tenant had completed the entire cleanup required and she presented no evidence that the mould re-occurred during the remainder of the tenancy that was to end April 30, 2015 or the rest of the time the tenant lived in the unit until November 2015.

As a result, I find that the tenant has failed to provide sufficient evidence to establish the landlord should be held responsible for the cost of cleaning mould, because he had not been informed of the problem and it does not appear to be an ongoing issue.

Further, in regard to the flooding of the unit on February 4, 2015, the tenant submits that the cause of the flood was bursting pipes, however the only evidence submitted by the tenant are pictures of a broken drain pipe from the kitchen sink. As such, I am not satisfied that the tenant has established that there was a flood resulting from any burst pipes.

I accept that the tenant could not use the kitchen will the drain pipe was not repaired. I find the tenant's claim for \$105.00 is high based on the value of the kitchen sink to the total value of the rental. That is to say that while the tenant could not use the kitchen sink or had to use it in a manner that required her to use a pail or bowl to catch waste water and then take to another drain I find the tenant could still eat, sleep, and toilet in the rental unit. As such, I award the tenant a nominal amount for this inconvenience in the amount of \$25.00.

As to the tenant's claim for laundry costs for this event I find the tenant has provide no evidence of the need for extra laundry or the costs involved. I, therefore dismiss this portion of the tenant's claim.

And finally to the flood of November 13, 2015 I find that flood occurred as a result of the rain storm and not, in any part, as a result of the landlord's actions or negligence. As such, I find the landlord is not in breach of the *Act*, regulation or tenancy agreement.

Therefore, I find the landlord cannot be held responsible for any of the costs or losses the tenant has incurred that are associated with the flood of November 13, 2015. I dismiss this portion of the tenant's claim.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(2) states that in addition, if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after the effective date or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);

- vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

While under usual circumstances a tenant is entitled to compensation in an amount that is equivalent to 2 months' rent when the landlord issue a 2 Month Notice to End Tenancy for Landlord's Use of Property and the landlord does not then use the unit for the stated purpose pursuant to Section 51(2), I find the circumstances of the ending of this tenancy are not usual.

That is that the landlord did issue such a Notice, however, the tenant did not move out of the rental unit in accordance with that Notice. Rather she stayed an additional 6 ½ months. Despite the landlord's claim that he continued to allow her to stay on a use and occupancy basis only, I find that by accepting rent for the length of time that he did he actually reinstated the tenancy. While the terms of that tenancy were never written or clear, I find that the tenancy was reinstated, nonetheless.

As such, and based primarily on the submissions of the tenant, I find the tenancy ended when it became frustrated. Frustration, according to Black's Law Dictionary – 7th Edition, is defined as the doctrine that, if the entire performance of a contract becomes fundamentally changed without any fault by either party, the contract is considered terminated.

I find, in the case before me, that this tenancy became frustrated after the flooding that occurred in the rental unit as a result of a major rain event in and around the residential property. As a result, I find the tenant is not entitled to the compensation she seeks for the landlord not using the property for the stated purpose. I dismiss this portion of her claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates

that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the tenant's submission that she provided her forwarding address to the landlord on November 29, 2015. As such, I find the landlord had until December 14, 2015 to either return the security deposit or file an Application for Dispute Resolution seeking to claim against the deposit. As there is no evidence before me that the landlord has either returned the deposit or file an Application, I find the landlord has failed to comply with his obligations under Section 38(1) and as such the tenant is entitled to double the amount of the deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,179.00** comprised of \$254.00 compensation for the August 2014 sewer backup; \$25.00 compensation for loss of use of kitchen sink; and return of double the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 16, 2016

Residential Tenancy Branch