



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's two agents (collectively the "landlord") and tenant DP (the "tenant") attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. One agent confirmed he is an agent of the property management company named in this application and had authority to speak on its behalf. The other agent, who is named as landlord in this application, confirmed he is an agent of the owners and had authority to speak on their behalf. The tenant confirmed he had authority to speak on tenant TP's behalf.

The landlord confirmed receipt of the tenants' application and evidence package. I find that landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Landlord Late Evidence

The landlord testified that the day prior to the hearing he emailed a 15 page evidence package to the tenants. The tenant confirmed receipt of the evidence package but contended this evidence should not be accepted, as it was emailed and late.

The evidence package was served contrary to section 88 of the *Act* and RTB Rules of Procedure (the “Rules”), Rule 3.15. Specifically, email is not an approved method of service and the package was not served within the prescribed 7 day timeline set out by Rules. The landlord failed to establish this evidence was unavailable within the prescribed timeline. For these reasons, I have not relied on the landlords 15 page evidence package to form any part of my decision.

Preliminary Issue – Tenants’ Claim

The tenant did not provide testimony or evidence in relation to the order sought in the application for the landlord to provide services or facilities required by law. Therefore this portion of the tenants’ claim is dismissed without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order to suspend or set conditions on the landlord’s right to enter the rental unit?

Are the tenants entitled to authorization to recover the filing fee for this application from the landlord?

Background and Evidence

Ownership of the rental unit changed in the spring of 2015, however the property management company, named as landlord in this application has maintained the same. The tenancy began approximately 10 years ago with the tenancy most recently renewed under the previous owner, on March 1, 2015 for a fixed term until February 28, 2018. Current rent in the amount of \$5,050.00 is payable on the first of each month. A security deposit of \$1,775.00 was paid by the tenants at the start of tenancy. The property management company maintains possession of this security deposit. The tenants continue to reside in the rental unit.

On June 24, 2016 a flood occurred in the rental unit. A plumber attended the unit this same date and could not determine the source of the flood. The tenant, an owner and operator of a contracting company completed the initial flood response restoration with authorization of the landlord. The tenant incurred \$5,350.22 in restoration costs and invoiced the landlord on July 6, 2016.

On September 9, 2016 a meeting was held between the two agents and the tenant. The parties agree that during this meeting the landlord agreed to pay the outstanding balance of \$5,350.22 to the tenant and that the tenant agreed he would perform the remainder of the restoration repairs and absorb the subsequent repair costs to the rental unit. The parties agree at the time of the meeting, the rental unit had not been restored to its original condition.

The tenant confirmed receipt of payment in the amount of \$5,350.22 from the landlord on September 12, 2016. The tenant conducted the remaining restoration and despite the September 9, 2016 agreement, invoiced the landlord for \$7,784.50 on January 9, 2017.

Tenants

It is the tenant's position that the September 9, 2016 agreement was not a "real" agreement. The landlord did not carry sufficient insurance and because of this the landlord did not take appropriate action to remedy the flood situation. At the meeting, the tenant essentially "gave up" and because he had the skill set he agreed to repair the flood damage at his cost. The tenants now seek to recover this cost in the amount of \$7,784.50. The tenants submitted an invoice in this amount, detailing the restoration work.

The tenant testified that during the flood situation, while he was out of town his wife experienced an issue with the washer. An attending service company deemed the washer unserviceable. The tenant testified that because his wife did not feel comfortable contacting the landlord due to the ongoing flood issue, at her own discretion, she purchased a used washer and disposed of the broken washer at the cost of \$350.00. The tenants seek to recover this cost in the amount of \$350.00. The tenants have submitted a receipt for the washer cost, delivery and installation.

In the tenants' application the tenants request a rent reduction for the loss of quiet enjoyment or lease extension of six months. During the hearing the tenant testified that they seek a rent reduction for the loss of quiet enjoyment they endured as a result of the flood. The tenant maintains that the landlord had a responsibility to repair the unit, and

due to insufficient insurance failed to do so, leaving the tenant no alternative but to agree to complete the repair work himself. The tenant testified that because he runs his business during the day he could only tend to the needed repairs of the rental unit after the workday. In calculating the rent reduction, the tenants considered the flood date of June 24, 2016, the final repair completion date of January 13, 2016, the daily rental rate paid and the percentage of the square footage affected by the flood, for a total rent reduction of \$1,374.11.

The tenant indicated that on January 3, 2017 the landlord posted a notice of entry for January 5, 2017. The tenant contends this notice is invalid and the landlord should not have entered on January 5, 2017. As a result, the tenants seek to suspend or set conditions on the landlord's right to enter the rental unit. The tenants have provided a copy of the notice of entry.

Landlord

It is the landlord's position that the tenants' application is based on the landlord's refusal to renew the fixed term tenancy. The landlord testified that sometime in January of 2016 the tenants requested a two year extension on the fixed term and because the landlord declined the tenants' request, the tenants filed the application for dispute resolution.

The landlord testified that the September 9, 2016 meeting resulted in the tenants' agreement to pay for any further restoration repairs; therefore the landlord is not responsible for the \$7,784.50 invoiced amount. The landlord contends an email dated September 12, 2016 summarizing the meeting serves as a written settlement agreement pertaining to this matter.

In regards to the washer, the landlord disputes responsibility of this cost as the tenants purchased the replacement washer without notification of an issue or approval of purchase.

In relation to the rent reduction, the landlord testified that the flood was not the landlord's fault.

The landlord did not provide testimony in relation to the tenants request to suspend or set conditions on the landlord's right to enter.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* establishes that a 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, makes it suitable for occupation by a tenant.

Restoration Work

In this situation, the parties confirm the rental unit was damaged due to a flood, which cause could not be determined. Regardless of the tenants' intent for filing the application for dispute resolution, according to section 32 of the *Act*, the landlord is obligated to maintain the property. Therefore I find the landlord's attempt by way of a settlement agreement, to have the tenant responsible for the cost associated with restoring the property is an attempt to contract out of this *Act*. Based on section 5 of the *Act*, I find such an attempt is of no effect.

As I have determined the tenant is not responsible for the cost of restoring the rental unit, and because the landlord permitted the tenant to complete the restoration, I find the landlord is responsible for the invoiced amount of \$7,784.50.

Replacement Washer

In regards to the washer, I find the tenants failed to mitigate the loss being claimed as they failed to notify the landlord of the repair issue at the time of breakdown. For this reason, I dismiss this portion of the tenants' monetary claim.

Loss of Quiet Enjoyment

Section 28 of the *Act* establishes a tenant's entitlement to quiet enjoyment which includes rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants seek reimbursement of rent from June 24, 2016 to January 13, 2017 in the amount of \$1,374.11.00 for the loss of use of the basement kitchen and main level dining room, specifically 4.55% of the total square footage of the rental unit.

In this case, I find that as a result of the breach of the tenants' right to quiet enjoyment and the breach of the landlord's obligation to provide a rental unit that complies with section 32 of the *Act*, the value of the tenancy agreement was reduced.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

There is no dispute that the basement kitchen and main level dining room were affected by the flood. Based on the evidence submitted I find it reasonable that the tenants could not adequately use these areas during the restoration.

With consideration of the objective value of the areas impacted, the nature of water damage, and the duration of the loss, I accept the tenants' submission and value the diminishment of this tenancy as 4.55%. I find that the tenancy has devalued since June 24, 2016 until January 9, 2016, the date of the final invoice. In accordance with paragraphs 65(1)(c) and (f) of the *Act*, I find that the tenants are entitled to a retroactive rent abatement in the amount of \$1,344.68 for the 178 days of loss. I consider this amount reasonable given the impact that the leak had on the tenants.

Suspend or Set Conditions on Landlord Right to Enter

Section 29 of the *Act* sets out the provisions that establish when a landlord can enter a tenanted rental unit. In the circumstances described above, the landlord did not abide by these provisions. Specifically the notice of entry did not include the purpose of entry.

Despite this contravention, I find this one instance does not warrant suspension on the landlord's right to enter. Rather I find this restriction would impede access to the rental unit in the event of an emergency.

I caution the landlord to cease and desist from unauthorized entry and abide by section 29 of the *Act*.

Filing Fee

As the tenants were successful in this application I find they are entitled to recover the \$100.00 filing fee for a total monetary award of \$9,229.18.

Conclusion

The tenants' application for an order for the landlord to provide services or facilities required by law is dismissed without leave to reapply.

I order the tenants to deduct \$9,229.18 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award provided to the tenant at this hearing.

The tenants' application for an order to suspend or set conditions on the landlord's right to enter the rental unit is dismissed without leave to reapply.

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: March 7, 2017

Residential Tenancy Branch