



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNR, ERP, RPR*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$20,172.00, for loss under the *Act*, and for an order directing the landlord to carry out repairs.

These parties attended a hearing on February 01, 2017. The landlord requested an adjournment due to unforeseen circumstances. In an interim decision dated February 01, 2017, the adjournment was granted and the Residential Tenancy Branch Office served both parties with notices for a hearing to be conducted on this date.

Despite having been served the notice of hearing package, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord and gave affirmed testimony. The evidence of both parties has been reviewed and considered in the making of this decision but I have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord negligent with regard to maintenance of the rental unit and responding to the tenant's complaints? Is the tenant entitled to a monetary order for damages?

Background and Evidence

The tenancy started about 25 years ago. The rental unit consists of a two bedroom apartment in an apartment complex. The current monthly rent is \$986.00 payable on the first of each month.

The tenant stated that on July 10, 2016, a water pipe in the washroom burst and created a flood. This occurred while the plumber was carrying out maintenance work. The tenant stated that the entire apartment was flooded while the water ran for about 20 minutes until the plumber shut off the mains. A restoration company attended the unit that same day and restoration work started. Fans and dehumidifiers were placed inside the rental unit. The tenant stated that her bathroom sink was removed and replaced five months later.

The tenant also stated that while the work was ongoing she lost the use of the second bedroom because she was forced to use it to store her belongings that were relocated due to the flood. The tenant stated that when the workmen opened the walls to fix the water pipes, she saw mould. The tenant stated that there was asbestos in the walls and therefore she was exposed to it, which aggravated her medical condition.

The tenant stated that as of the date of this hearing the washroom is fully functional but she wants the landlord to paint the washroom and to replace the linoleum and the vanity.

The tenant also has a list of other repairs she needs done in the apartment which includes painting of the walls and ceilings, installing new carpet and fixing all the electrical outlets. The tenant also testified that the refrigerator broke down on July 15, 2016 and she lost food. The landlord responded immediately and had the appliance repaired under warranty. However the refrigerator broke down again in November and was also fixed in a timely manner. The tenant stated that she lost food both times.

In the landlord's evidence, there is a letter to the tenant dated November 29, 2016. The letter is in response to the tenant's request for compensation for the length of time taken to repair the tenant's suite. The landlord offered the tenant two options.

Option 1

Replace vinyl floor and cove base in the bathroom, repaint the bathroom and entry hallway and replace the hood fan.

This option also included a rent reduction of \$127.00 per month until January 2018

Option 2

Immediate access to an alternate two bedroom suite on the third floor plus the rent reduction offered in option 1

The tenant refused to accept both options and made this application for compensation in the amount of \$20, 172.00 for the following items:

1.	Return of rent for seven months	\$6,972.00
2.	Insurance deductible	\$500.00
3.	Cleaning	\$700.00
4.	Lost food	\$500.00
5.	Medication lost in flood	\$400.00
6.	Pain and suffering	\$10,000.00
7.	Relocation	\$400.00
8.	Mover	\$600.00
9.	Increased hydro costs	\$100.00
		\$20,172.00

The landlord's evidence consists of photographs taken of the tenant's food that is completely frozen. The appliance company reported that the refrigerator was working to manufacturer's specification and that the only issue was the overloading of the freezer which could be causing air flow issues.

The landlord also filed a letter from the restoration company which outlines the problems they experienced trying to gain entry to the rental unit to do the restoration work. The tenant would not allow access prior to 10am and on some occasions would not allow access at all. The letter goes on to say that this caused the restoration company a loss of income as they had to pay wages for work that did not get done and this restoration work would have been completed in 5-6 working days if the tenant had been cooperative. The last sentence informs the landlord any future work at this unit would be billed at premium rates to include the lost hours.

The tenant mentioned in her testimony that she wakes up at 8am every day and therefore is available at that time of the morning to allow the workers in.

Analysis

Section 32 of the *Residential Tenancy Act*, addresses the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord responded immediately to the requests for service and repair. I further find on a balance of probabilities that it is more likely than not that progress of the restoration work was hampered by the tenant which resulted in the delay of completion.

Regarding the refrigerator, I also find that the landlord responded in a timely fashion and notified the appliance company as the appliance was still under warranty. I accept that the tenant lost food the first time when she reported the problem in July 2016.

Tenant's monetary claim:

1. Return of rent for seven months - \$6,972.00

The tenant has claimed an amount which is in excess of the rent she paid for seven months. Based on the documents filed into evidence I find that the landlord made an offer of a rent reduction to the tenant, but the tenant refused to accept it.

I find that the landlord fulfilled his obligations by acting on the problem of flooding in a timely manner and he also made the necessary arrangements to repair the damage and restore services to the tenant. By the tenant's own testimony, I find that the landlord had limited time per day to carry out the restoration repairs, in order to accommodate the tenant's request for work to start no earlier than 10am every day.

In this case, the landlord was simply carrying out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However in order to carry out this duty, the landlord inconvenienced the tenant by placing machinery like fans and dehumidifiers and by having workers in and out of the rental unit for approximately seven months. I find that this inconvenience to the tenant resulted in a reduction of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. I also take into consideration that the tenant hampered the progress of the work which probably contributed to the amount of time it took for completion.

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.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work and did lose the use of the washroom sink and one bedroom for about five months. Therefore I find that the tenant is entitled to compensation. I must now determine the quantum of the damages that the tenant is entitled to.

The tenant pays rent in the amount of \$986 per month. I find it appropriate to award the tenant \$150.00 per month for a total of \$1,050.00 towards the inconvenience she endured during the seven months that it took for the completion of the repairs.

2. Insurance deductible - \$500.00

The tenant stated that she had not incurred this expense and therefore her claim is dismissed.

3. Cleaning - \$700.00

The tenant stated that she had extra cleaning to do as a result of the flood. Even though the restoration company probably took care of most of the cleaning, I find that the tenant may have had to carry out additional cleaning. Based on the size of the apartment, I find it appropriate to award the tenant \$200.00 towards her time spent cleaning.

4. Lost food - \$500.00

Based on the testimony of the tenant and the documents filed into evidence, I find that the landlord responded to the tenant's complaints in a timely manner and replaced the refrigerator. It is more likely than not that the tenant lost food the first time she reported the breakdown. The tenant did not file sufficient evidence to support her claim of \$500.00. I find it appropriate to award the tenant \$100.00 towards her loss.

5. Medication lost in the flood \$400.00

The tenant did not file evidence to support any out of pocket expenses that she may have incurred to purchase medication. Her claim is dismissed.

6. Pain and suffering - \$10,000.00

I find that the tenant may have been inconvenienced while the rental unit was being restored, but temporary discomfort or inconvenience does not constitute a basis for a claim for compensation for pain and suffering. I find that the landlord was not negligent in the handling of the restoration work and providing the tenant with a refrigerator. I further find that the tenant contributed in part to the delay in the completion of the repair work. I have already awarded the tenant compensation for the inconvenience she endured and the tenant has not proven her case for compensation for pain and suffering and therefore the tenant's claim is dismissed.

7. Relocation - \$400.00

The tenant continued to occupy the rental unit while the restoration work was ongoing. The tenant stated that she spent time at friends' places and is claiming \$400.00 for the cost of moving there. The tenant did not file sufficient evidence to support this claim and therefore it is dismissed.

8. Mover - \$600

The tenant agreed that she has not yet incurred this cost and accordingly I dismiss her claim.

9. Increase hydro costs - \$100.00

Even though the tenant has not provided sufficient evidence to prove this claim, I find it reasonable to expect that the tenant incurred extra costs for the power used to operate the fans and dehumidifiers. I award the tenant her claim.

Overall the tenant has established the following claim:

1.	Return of rent for seven months	\$1,050.00
2.	Insurance deductible	\$0.00
3.	Cleaning	\$200.00
4.	Lost food	\$100.00
5.	Medication lost in the flood	\$0.00
6.	Pain and suffering	\$0.00
7.	Relocation	\$0.00
8.	Mover	\$0.00
9.	Increased hydro costs	\$100.00
		\$1,450.00

As per the tenant's application, I order the landlord to carry out the following repairs/renovations:

1. Paint walls and ceiling of the washroom and replace the linoleum and vanity.
2. Replace carpet in the rental unit
3. Paint the walls and ceilings in the rental unit (last painted 20 years ago)
4. Fix burnt out electrical outlets

I order the landlord to complete the above by July 01, 2017. In the event that the work is not complete by this date, the tenant may make application for dispute resolution. I also order the tenant to fully cooperate with the workers and grant access to the workers for a full work day starting at 8:00am. If the tenant does not cooperate with granting access, the landlord is not obliged to carry out the renovations.

The tenant has established a claim of \$1,450.00. The tenant may make a one-time deduction of this amount from rent. Since the tenant's rent is \$986.00, the tenant may skip paying rent for April 2017 and will pay \$522.00 for the month of May 2017. Rent for June 2017 onwards will resume at the full rate of \$986.00.

Conclusion

The tenant has been granted compensation in the amount of \$1,450.00.

The landlord has been ordered to complete the repairs/renovations listed above

The tenant may make a deduction of this amount from rent. Accordingly the tenant will pay no rent for April 2017 and will pay \$522.00 for May 2017. Rent for June 2017 and onwards will be paid in full.

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 03, 2017

Residential Tenancy Branch

