



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to end a fixed term tenancy earlier than the date specified in the tenancy agreement pursuant to section 44; and
- authorization that the tenant recover the filing fee of this application from the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were in attendance I confirmed that there were no issues with service of the tenant’s application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant’s application and their respective evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages?

Should the tenant be allowed to end the fixed term tenancy earlier than the date specified in the tenancy agreement?

Is the tenant entitled to recover the filing fee of this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This fixed term tenancy began on September 15, 2016 and is scheduled to end on September 30, 2017. The rental unit is the upper floor of a detached house. The monthly rent is \$1,700.00 payable on the first of the month. A security deposit of \$850.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant testified that she awoke during the night of December 19, 2016 to discover that the kitchen of the rental unit was leaking from the ceiling. She described the leak as being downpours of water in several locations. She said that she set up buckets and pans to collect the water but would need to replace them every 15 minutes as the water was flowing in rapidly. The tenant said that she was concerned that the water could cause additional damage in conjunction with electricity and so she turned off the power in the rental unit. The tenant testified that she contacted the landlord to report the flooding as soon as possible. The leaks slowed down when the rain stopped and emergency repairs were done. The tenant said that proper repairs were not started until February 6, 2016. During this time the tenant was unable to use the kitchen and relied upon take-out and pre-made food. The tenant testified that the lack of a kitchen was especially problematic during the holiday season. The tenant also testified that she first became aware of rat feces and asbestos in the attic during this period and became concerned about the health of herself and her family.

The landlord testified that upon being notified by the tenant about the flooding, action was promptly taken. The landlord said that contractors and the insurer were contacted and that they attended at the rental unit within 24 hours. The landlord said that after the initial emergency repairs the third-party contractors and insurer took time to process the insurance claim and approval was not given until January 19, 2017. The landlord said that while areas of the rental unit were unusable due to the water damage he believes the duration that the kitchen was unusable was only for about a week. The landlord testified that he did his best to accommodate the tenant, first by offering the tenant the use of the other rental unit in the building and also by providing the tenant funds to find accommodation for two days that the rental unit was uninhabitable.

The landlord testified that the rat feces is a result of garbage in the tenant's rental unit attracting vermin. The landlord said that the previous tenant accumulated garbage in and around the rental unit and there continues to be an issue with the sanitary condition of the rental unit.

The parties agree that the relationship between tenant and landlord has deteriorated as a result of the flooding incident. The landlord testified that he has no objection to this fixed term tenancy ending earlier.

Analysis – Monetary Award for Loss of Quiet Enjoyment and Loss of Value of Tenancy

The tenant makes a claim for a monetary award for damage or loss under the Act, regulation or tenancy agreement. The tenant makes a claim for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The parties agree that the December 19, 2016 incident caused flooding in the rental unit kitchen and the tenant was unable to use certain facilities in the unit. The landlord testified that he took all reasonable action by contacting contractors and insurers to have repairs made in a timely manner. While I find that the flooding and water damage

affected the tenant's ability to enjoy the rental unit I find that the landlord took reasonable action to correct the damage.

I find that the flooding has resulted in a loss in the value of the tenancy for tenant. Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The tenant suggests that an amount of \$3,500.00, the equivalent of two full month's rent, is appropriate in the circumstances. The tenant detailed the effect that the inability to use the kitchen has had on her and her family. She testified that meals consist of take-out or pre-made items. Prior to the flooding the tenant said that she regularly used the kitchen to prepare meals for the family. I find that the kitchen had a central role for the tenant in this tenancy.

While I find that the water damage has affected the tenant's ability to enjoy the full rental unit, there is undisputed evidence that the tenant continued to reside in the rental unit for the most part and received some monetary compensation earlier. The tenant has testified that she was able to reside in the rental unit except for two days that she vacated while repairs were being performed.

There is insufficient evidence that the presence of asbestos and rat feces in the attic of the rental building had a material effect on the tenancy or the tenant's use of the rental unit. While I understand that knowledge of the conditions was unpleasant, I find the tenant has not provided sufficient evidence to show there was a loss in the value of the tenancy stemming from this.

I find that the rental unit was affected by the water damage but not to such an extent that the tenant was unable to reside in the unit. I find that the flooding affected the tenant's daily routine and ability to fully use the rental unit. I find that the tenant used the kitchen regularly before the flooding and the inability to prepare meals for the family had a real effect on the value of this tenancy for the tenant. Under the circumstances, I am issuing a monetary award which reflects that the tenant did suffer loss in the value of her tenancy agreement beyond that for which she has already been compensated.

Balancing the fact that the tenant was able to continue to reside in the rental unit with the tenant's evidence of the impact the loss of the kitchen had on her daily routine I find that an appropriate amount of damages for the tenant's loss in the value of her tenancy is \$1,200.00.

I base the amount of damages on the period of loss, from December 19, 2016 to March 31, 2017 the date of the hearing, approximately 3.5 months. I find that the loss of the affected areas had an effect of reducing the value of the tenancy for the tenant by approximately 20%. I make this finding based on the tenant's testimony that she would use the kitchen daily to prepare the meals for the family and the effect it had on the family's ability to comfortably dine together. I also note that the initial damage occurred during the holiday season when many individuals can be expected to make use of the kitchen to prepare meals for extended family and friends. Therefore, I find that a monetary award of \$1,200.00 which is approximately equivalent to 20% of the full rent of \$1,700.00 for a period of 3.5 months to be appropriate in these circumstances.

As the tenant was partially successful in her application, the tenant is entitled to recovery of the \$100.00 filing fee for this application.

Early End of a Fixed Term Tenancy

This is a fixed term tenancy scheduled to end on September 30, 2017. Both parties testified that they have little interest in continuing this tenancy. The landlord testified that he wishes to end this tenancy as soon as the tenant is able to move out of the rental unit and would not seek to enforce the fixed term of the tenancy agreement.

I find the relationship between the landlord and tenant has deteriorated to the point that justifies ending the tenancy earlier than the fixed term. Therefore, as both parties are in agreement, I order that pursuant to section 14(2) of the *Act* this tenancy will continue as a month-to-month tenancy until ended in accordance with the *Act*.

Conclusion

I order that this tenancy be amended from a fixed term to a month-to-month tenancy as of the date of the hearing, March 31, 2017 and will continue under those terms until ended in accordance with the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$1,300.00 which includes the loss of the value of the tenancy to the date of the hearing and the filing fee for the application.

As this tenancy is continuing, I allow the tenant to recover the filing fee by reducing the monthly rent by that amount on the next monthly rental payment to the landlord. In the event that this is not feasible, I issue a Monetary Order in the tenant's favour in the amount of \$1,300.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 10, 2017

Residential Tenancy Branch