



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Although the tenant stated in their details of dispute that their photographs were to follow, the tenant confirmed at the hearing that they did not submit any photographs in support of their claim.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damages or loss?

Background and Evidence

The parties agreed that the tenancy began on August 2015. Rent in the amount of \$600.00 was payable on the first of each month. The tenant paid a security deposit of \$300.00. The tenancy ended on July 31, 2016.

The tenant claims as follows:

a.	Return of 50% rent for April, May, June and July 2016	\$1,200.00
	Total claimed	\$1,200.00

The parties agreed that in January 2016, a flood occurred in the upper unit causing significant water damage to the landlord's living area and the rental unit.

The tenant testified that they were prepared to live in the rental unit and pay full rent while the landlord made the necessary repairs for the first two months as they did not have tenant insurance.

The tenant testified that the repairs were not completed within a reasonable amount of time. The tenant stated that the carpets were removed leaving the floors in the kitchen, and dining area bare concrete. The tenant stated that the drywall was removed and replaced in these areas; however, the walls were not finished. The tenant stated that a second flood occurred when the landlord's washing machine broke and that a 3 square foot portion of drywall was removed in the bathroom and was not replaced. The tenant stated that the only space that was livable was their bedroom.

The landlord testified that they were not responsible for the flood which occurred. The landlord stated that they had insurance which would cover the restoration work; however, the restoration company wanted their family to move out of the premise while the work would be completed over the course of a month.

The landlord testified that they have two children with disabilities and relocating them was not reasonable. The landlord stated that the restoration company was not able to accommodate the children's needs by working around the children's schedule. The landlord stated that they made the choice that they would do the repairs and to complete the work during the hours that do not impact the children.

The landlord testified that they had a discussion with the tenant and asked if they wanted to move out; however, the tenant did not want to move. The landlord stated the restoration company would not do the repairs only to the tenant's unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 32 of the Act states:

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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I accept the evidence of both parties that a flood occurred in January 2016, causing damaged to both the landlord's living area and the tenant's rental unit. I accept the evidence of both parties that a second flood occurred, causing damage to the tenant's bathroom.

I accept the evidence of the landlord that they have children that have special needs and that they made the decision to do the repairs, as that was in the best interest of their children.

However, the landlord is also in a business of renting and has an obligation under the Act to maintain and repair the rental premise.

I accept the flood was not the fault of either party and that had the tenant had insurance it would have provided the tenant with alternate living accommodations for a short period of time while the repairs were made to the rental unit, such as one month. I find it highly unlikely that any insurance company would cover the tenant's relocation costs, when the landlord is working around their own family needs and not the needs of the tenant.

In this case, I find the tenant mitigated their loss as they waived compensation for the first two months. Although the restoration company was not willing to make repairs only to the rental unit, the landlord could have hired an independent company to expedite the repairs in the unit, rather than to attempt to do the repairs on their own; this caused an unreasonable delay in making the repairs to the rental unit as the repairs were not completed in six months. I find the landlord breached the Act when they failed to make the necessary repairs.

I find the tenant did lose the use of a portion of their space. Simply because the tenant did not want to move from the premises did not release the landlord from their obligation under the Act to make repairs.

I am satisfied that the tenancy was devalued. I am satisfied based on the evidence that the tenancy was devalued by 50%; the landlord did not deny the extent of the damage

or the condition that the tenant was living in. Therefore, I find the tenant is entitled to recover 50% of the rent for the months of April, May, June and July 2016, in the total amount of **\$1,200.00**.

I find that the tenant has established a total monetary claim of **\$1,200.00** comprised of the above described amount. I grant the tenant an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant is granted a monetary order pursuant to section 67 of the Act.

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: May 18, 2017

Residential Tenancy Branch