



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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;
- orders requiring the landlord to make emergency and regular repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 53 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was served with the tenant's application for dispute resolution and hearing notice on June 9, 2017 by way of registered mail, on June 12, 2017 personally to the landlord's agent, and again on June 12, 2017 by leaving a copy in the landlord's agent's mailbox. The tenant stated that on July 7, 2017, she personally served the landlord with her written evidence and also sent it by registered mail on July 10, 2017. The tenant provided Canada Post receipts and tracking numbers for the registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application and notice of hearing on June 14, 2017 and written evidence on July 12, 2017, five days after each of their registered mailings.

The tenant did not provide evidence regarding her application for “other” remedies. Accordingly, this portion of the tenant’s application is dismissed without leave to reapply.

Issue to be Decided

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

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

Is the tenant entitled to orders requiring the landlord to make emergency or regular repairs to the rental unit?

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

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on November 1, 2000. Monthly rent in the current amount of \$1,362.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed with the former landlord, not the current landlord. The landlord assumed this tenancy from the former landlord. The tenant continues to reside in the rental unit. The rental unit is a two-bedroom, one-bathroom apartment of approximately 1,000 square feet located on the main floor of a 16-unit apartment building.

The tenant seeks a monetary order of \$8,152.32 from the landlord. The tenant seeks a rent reimbursement of \$681.00 for March 2017 and \$1,362.00 for each month from April to August 2017. The tenant also seeks a reimbursement of her \$500.00 insurance deductible, registered mail costs of \$10.71 for her hearing package, hydro costs of

\$50.61 and the application filing fee of \$100.00. The tenant requests that the landlord perform repairs to the second bedroom and the bathroom in the rental unit.

The tenant seeks the above costs because she said that a flood occurred at the rental unit on March 14, 2017, due to a burst hot water heating pipe in the ceiling of the second bedroom. She said that she noticed the water drip in the second bedroom because it leaked onto her bed, so she had to use buckets to contain the water and she provided photographs of all of this. She stated that she made repeated efforts to call the landlord immediately when the leak occurred but no one answered. She claimed that she went and buzzed the number of the building manager in the rental building, who the landlord said could be contacted to deal with tenancy issues, and spoke to him about the flood but he did not speak English well. The tenant provided written notices from the landlord indicating who to contact regarding tenancy issues. The tenant explained that she called the landlord's husband, who was offered as another contact, who told her that all costs related to this leak would be covered by the landlord. The tenant said that a first plumber was sent in to determine the cause of the flood but was unable to, so a second plumber came in and advised her that there was water damage due to black mold and there was a previous leak in the same area that was repaired badly with duct tape, which is probably why it leaked again. The tenant provided photographs of the damaged areas in the second bedroom.

The tenant testified that she attempted to contact the landlord without success on March 30 and 31 and again on April 5 and 8, by way of text messages and she provided copies of same. She said that she called and spoke to the landlord on May 28, 2017 and the landlord said that she would return the call but never did. She said that the landlord left her a note on June 19, 2017, saying that she would take care of the repairs as soon as possible.

The tenant said that the landlord then hired a restoration company through insurance, in order to repair the flood damage, and that they removed the drywall and flooring in the second bedroom to do so. She said that the company initially used high-powered drying fans and heaters for three weeks in order to dry the second bedroom after the flood and that her hydro utility costs increased because of it, so she is claiming the difference in this increase. She stated that she kept in regular contact with the restoration company in order to determine the progress of the repairs and she provided emails and letters to confirm same. She maintained that they notified her to close the door to the second bedroom in order to avoid the unpleasant smells from the exposed walls and flooring. She provided notices of safety hazards from the restoration company indicating that there was lead and asbestos testing in the second bedroom

and she provided copies of the report results, claiming that she was not sure what they meant but she avoided going into the second bedroom. She said that she contacted the restoration company by way of a letter, dated June 16, 2017, in order to determine the progress of the repairs.

The tenant provided photographs of the condition of the second bedroom in March, April and June 2017. She claimed that she paid a \$500.00 deductible to her own insurance company in order to obtain compensation for the bed, bedding, clothing and other personal items lost due to the flood. She said that the landlord's husband verbally agreed to reimburse her for this cost. The tenant explained that the landlord then switched from using the restoration company to a private company and that no repairs have been completed to date. She said that she does not know whether this private company is qualified to do the work and she does not have their contact information in order to evaluate their credentials. She said that she is unable to stay or sleep at the rental unit for more than one to two days per week because of the musty smell, even when the door is closed to the second bedroom. She said that she has been mainly living at her boyfriend's place, despite the fact that her insurance company said they would pay for a hotel if she needed one. She has claimed for a reimbursement of all of her past rent from March 14, 2017 to present as well as a future rent reduction for not being able to live in the rental unit.

Analysis

Compensation

Section 32 of the *Act* deals with both parties' obligations to repair and maintain the rental unit:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the tenant compensation of \$1,498.20 total for a past loss of use of her second bedroom from March 14 to August 31, 2017. I awarded \$272.40 per month, which is 20% of her monthly rent, for the period from April 1 to August 31, 2017. I awarded \$136.20 from March 14 to 31, 2017, which represents 20% of the half month of rent sought of \$681.00. I find that the above amount is a reasonable amount based on the tenant's monthly rent of \$1,362.00.

I find that the tenant has been unable to use the second bedroom in the rental unit because the landlord failed to inspect and complete repairs in a timely manner and that this area is still unusable because repairs have not been done. I find that the second bedroom is not a primary bedroom, since it was only used for guests to sleep when they visited, and the tenant only used it for storage of her clothing and other items. The tenant still had use of the master bedroom, kitchen, bathroom, and living room in the rental unit, which represents four areas in the rental unit. I find that the second bedroom is equal to one room and 20% of the rental unit based on usage not square footage. Although the tenant said that she could not stay in the rental unit because of the musty smell from the second bedroom due to the wall and flooring being exposed, she was not recommended to stay away by any professionals dealing with the repairs. The restoration company told her to close the door to the second bedroom, which she

has done, but did not advise her not to reside at the unit. The tenant continues to reside at the rental unit about one to two times per week, as per her testimony. The tenant's insurance company offered to pay for a hotel as part of the tenant's insurance but the tenant declined, instead choosing to stay at her boyfriend's place.

I award the tenant \$250.00, which represents half of the \$500.00 insurance deductible that she had to pay in order to file a claim to recover her losses due to the flood. The tenant provided an invoice indicating that she paid the full deductible to file her insurance claim. I find that the tenant provided undisputed evidence that a leak occurred in the same spot in the second bedroom ceiling two years prior and the repair technician advised her it was because a bad duct tape job was done by the previous technician to repair the area. I also find that the landlord delayed in responding to the tenant's calls for assistance when the flood first happened since the tenant tried to call the building manager agent that the landlord recommended as well as the landlord's husband and the damage to the tenant's items may have been worsened because of this. The tenant also stated that the landlord's husband offered to pay for her full deductible and then failed to do so.

I award the tenant \$25.31, which represents half of the \$50.61 amount sought for an increase in hydro usage from March to April 2017. The tenant provided copies of her previous hydro bills dating back to April 2016, one year prior, which show a consistently low monthly average hydro use of approximately \$27.85. The tenant's hydro bill due on April 19, 2017 was in the amount of \$78.46, which the tenant used to subtract her average use of \$27.85, to arrive at \$50.61. I find that the additional hydro usage was likely due to the heavy drying fans installed by the landlord to dry the flooded second bedroom. However, I also find that the increase in the utilities could also be due to the weather and other factors, not involving the landlord, and this is the reason for awarding only half of the amount sought.

I informed the tenant during the hearing that she could not obtain \$10.71 in registered mail fees because the only hearing-related fees recoverable under section 72 of the *Act*, are for filing fees.

Repairs and Future Rent Reduction

Based on the tenant's undisputed testimony at this hearing, I order the landlord, at her own cost, to perform the following at the rental unit:

- 1) have a certified, licensed technician inspect the bathroom in the rental unit within 30 days of the receipt of this decision, in order to determine whether mold exists

between the sink and the bathtub and if the technician recommends repairs are required, the landlord must complete these repairs within 30 days of their recommendation;

- 2) have a certified, licensed technician inspect the bathroom in the rental unit within 30 days of the receipt of this decision, in order to determine the damage where the bathtub is separating from the wall and if the technician recommends repairs are required, the landlord must complete these repairs within 30 days of their recommendation;
- 3) provide the tenant with written reports of the above technicians' inspection findings and any recommendations to perform work or why no recommendations for repair are being made, within 15 days of the inspections being completed.

If the landlord does not complete the above conditions for #1 and/or #2 within the above timelines, I order the tenant to deduct \$50.00 from her monthly rent for the above conditions #1 and/or #2, beginning on the first day of the following month, until the conditions are completed. If the parties disagree as to whether the conditions have been sufficiently completed, both parties have leave to reapply at the Residential Tenancy Branch ("RTB") for determination.

I order the landlord to provide the tenant with the name, qualifications and contact information for the technician and company that is completing the repairs to the second bedroom of the rental unit, within 15 days of the receipt of this decision. The tenant claimed that instead of the landlord using the restoration company through her insurance, the landlord switched to a private company to complete the repairs and the tenant is unsure as to whether they are qualified to do so. If the parties disagree as to whether the private company is qualified to complete the repair work, both parties have leave to reapply at the RTB for determination and compensation. The repairs to the second bedroom in the rental unit are dependent on the company, not only the landlord, and these major repairs can take a significant amount of time to complete, particularly if insurance issues are involved. I do not have a time estimate as to when these repairs will be completed, what factors are involved in the repairs, whether there are insurance issues to consider, and the tenant may move from the rental unit at some point in the future. Because of these uncertain factors, some of which may be outside of the landlord's control, the tenant's application for a future rent reduction for the second bedroom repairs from September 1, 2017 forward, is dismissed with leave to reapply.

As the tenant was mainly successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord, at her own cost, to perform the three numbered conditions as noted above. If the landlord does not complete each of the above conditions within the above timelines, I order the tenant to deduct \$50.00 from her monthly rent for each item above, beginning on the first day of the following month, until the conditions are completed. If the parties disagree as to whether the conditions have been sufficiently completed, both parties have leave to reapply at the RTB for determination.

I order the landlord to provide the tenant with the name, qualifications and contact information for the technician and company that is completing the repairs to the second bedroom of the rental unit, within 15 days of the receipt of this decision. If the parties disagree as to whether the private company is qualified to complete the repair work, both parties have leave to reapply at the RTB for determination and compensation. The tenant's application for a future rent reduction for the second bedroom repairs is dismissed with leave to reapply.

I order the tenant to deduct \$1,873.51 from her future rent payable to the landlord at the rental unit for this tenancy, in full satisfaction of the monetary award made at this hearing.

The tenant's application for "other" unspecified remedies and registered mail fees of \$10.71 is dismissed without leave to reapply.

The tenant's application for an order requiring the landlord to make emergency repairs to the rental unit is dismissed with leave to reapply, as no emergency repairs were requested by the tenant and I find that the above repairs are not emergencies.

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 14, 2017

Residential Tenancy Branch