



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for monetary compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing commenced on August 30, 2017 and during the allotted hearing time the tenant presented her case against the landlord and the landlord provided a response; however, the hearing time expired before the parties had an opportunity to provide rebuttals or final arguments. The parties indicated that they would prefer to provide rebuttal and final arguments by way of written submission. I ordered the hearing adjourned and gave the parties instructions with respect to submitting and serving their written submissions upon the other party and to the Residential Tenancy Branch. An Interim Decision was also sent to the parties and should be read in conjunction with this decision.

During the period of adjournment I received written submissions from both parties, including registered mail receipts to show the submissions were sent to the other party.

I have considered all of the oral and written submissions and evidence before me in making this decision; however, with a view to brevity in writing this decision I have only summarized the parties' respective positions and described the most relevant evidence.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord as claimed?

Background and Evidence

The one year fixed term tenancy started on February 1, 2012 and continued on a month to month basis upon expiry of the fixed term. The monthly rent was originally set at \$970.00 and was increased twice during the tenancy to set the rent at \$1,025.00 in 2015 and \$1,050.00 in 2016. The rent was due on the first day of every the month. The rental unit was described as a two bedroom apartment.

The tenancy ended due to unpaid rent. The tenant withheld rent for the month of August 2016. The landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on August 8, 2017. The tenant did not file to dispute the 10 Day Notice or pay the rent within five days. The landlord applied for and was granted an Order of Possession effective two days after service and a Monetary Order for unpaid rent of \$1,050.00 for the month of August 2017 on August 29, 2017 (file number referred to on cover page of this decision).

The parties provided consistent testimony that the tenant did satisfy the Monetary Order and the landlord permitted the tenant to occupy the rental unit for the month of September 2016 without charging her any rent as compensation for a flood that occurred in 2016.

On September 29, 2016 the tenant filed an Application for Review Consideration of the decision and orders issued on August 29, 2016; however, the rental unit was found to be vacated on September 30, 2016. On October 6, 2017 an Arbitrator issued a decision dismissing the tenant's Applicant for Review Consideration as it did not contain any basis for finding the landlord was fraudulent in obtaining the decision or orders of August 29, 2016 or that a review hearing was otherwise warranted under the review provisions of section 79 of the Act.

On April 5, 2017 the tenant filed this Application for Dispute Resolution seeking monetary compensation of \$6,225.00 from the landlord. This amount is the sum of rent the tenant paid for the months of September through November 2015 (3 x \$1,025.00) and rent the tenant paid for the months of June 2016 through August 2016 (3 x \$1,050.00). Below, I have summarized the tenant's claim against the landlord and the landlord's position.

Tenant's position

The tenant's claims pertain to two water leaks in the rental unit. The first leak involved water leaking from the ceiling between the bedroom and bathroom on or about May 2, 2015 (herein referred to as "the first flood"). The leak was reported to the manager and the manager inspected the unit. In the next couple of days the leak worsened to the point the ceiling started falling down. The landlord was called again and the landlord responded by patching the water pipe, suctioning the water and covering the ceiling. At the end of May 2015 or early June 2015 the landlord informed the tenant that a major repair was required and that she would have to vacate the rental unit temporarily. The landlord offered the tenant another rental unit to use but it was only a one bedroom apartment and in a different area than the school the tenant's children attended. The tenant and her children went to stay elsewhere in the month of June 2015 and were not required to pay rent for the month of June 2015. The tenant and her children stayed at the one bedroom apartment the landlord offered the tenant for the months of July 2015 and August 2015. The tenant paid rent of \$1,025.00 for July and August 2015 but the landlord subsequently reimbursed the tenant the difference between rent for the one bedroom apartment and her two bedroom rental unit. The tenant moved back to the rental unit for September 2015 even though the repairs to the rental unit were not fully completed. The tenant submitted that there was no door on the bathroom, the carpet was disgustingly dirty, there was a hole in the ceiling and the bathroom floor was not finished. The landlord did not finish the repairs until the end of November 2015. The tenant provided photographs she took in early November 2015.

I noted that the tenant requested return of 100% of the rent she paid for September 2015 through November 2015 even though she and her children were residing in the unit. The tenant explained that she requested 100% because "the landlord didn't care". The tenant then stated that she would accept what I thought was fair compensation although she was of the position that a 50% rent abatement is reasonable for the first flood.

On or about May 27, 2016 water flooded from under the toilet and bathtub in the rental unit (herein referred to as "the second flood"). The tenant reported the issue to the landlord and the landlord responded by suctioning the water, opening the walls, pulling up the bathroom and kitchen flooring and drying the wet areas. Aside from the flooring being ripped up and the walls opened, the tenant submitted that she could not use the closet because of the open wall and the rental unit also had mice and cockroaches. The tenant paid rent for June 2016 and July 2016 but decided to withhold rent for August 2016 due to the conditions of the rental unit; however, as explained above, her decision to do so resulted in the end of her tenancy for unpaid rent. The tenant

continued to live in the rental unit until the end of September 2016 and the landlord did not charge the tenant rent for September 2016. The tenant explained that she did not vacate the rental unit in August 2016 despite not paying rent and being served with a 10 Day Notice because she could not afford to move; it was hard to find another home in the limited amount of time; and, because it was the start of the school year. The tenant submitted that in the month of September 2016 the landlord worked on a vacant unit across the hall in September 2016 instead of her unit.

The tenant seeks return of 100% of the rent she paid for the months of June 2016 through August 2016 on the basis there was an unreasonable delay in repairing the rental unit.

The tenant acknowledged that she did not carry any tenant's insurance prior to the first flood and did not seek any tenant insurance after the first flood.

Landlord's response

The first flood was the result of a flood from a burst water pipe on the third floor. The tenant called the office, which was closed at the time, instead of the landlord's emergency telephone number. In response the landlord brought in a plumber and a restoration company to repair and restore the property. The tenant was offered another rental unit starting in June 2015 but the tenant chose not to take it until late June 2015 and the tenant was not charged any rent for June 2015. The tenant used the alternative accommodation for July 2015 and August 2015 and the landlord reimbursed the tenant the difference between rent for a one bedroom and the rent payable for the rental unit. The tenant moved back to the rental unit in late August 2015 which delayed the landlord's ability to complete repairs even though the unit was not ready for her to return. The landlord had to install new flooring, a new bathtub, toilet and tiling to finish the repairs. The tenant was without plumbing fixtures for brief period of time and the other outstanding repairs were only minor in nature. The renovation was completed in November 2015. The landlord acknowledged the door to the bathroom would not close all the way and the tenant removed the door without the landlord's approval and installed her own door. The landlord submitted that flood repairs and restoration takes time and that three units had to be repaired as a result of the first flood. The time for restoration also depends on drying times and contractor's schedules. The landlord carried insurance and paid \$32,000.00 for the restoration.

The second flood was the result of a sewer pipe backup from roots infiltrating the large pipe outside the building. As a result of the clogged sewer line, water backed up in the toilet and tub. The landlord had a plumber and restoration company attend the property

to commence drying efforts and make repairs. The drying process was slow because a lot of water escaped the system. The landlord offered the tenant a different rental unit to use during the repair process but she declined the offer.

The landlord is of the position that the tenant's claim be denied because:

- The tenant did not carry tenant's insurance.
- The tenant did not call the landlord's emergency telephone number upon discovery of the first leak.
- The tenant was not charged rent for June 2015 and the tenant only paid the rent for a one bedroom apartment that she was provided in July 2015 and August 2015 after the landlord refunded rent to the tenant.
- The tenant declined the landlord's offer of a different rental unit to use during the second flood restoration process.
- The tenant was not charged any rent for September 2016.
- The landlord refunded the tenant the full amount of the security deposit and did not charge the tenant any money for replacing the bathroom door without permission or painting the wall in the rental unit different colours.

Tenant's rebuttal

The tenant called the landlord's cell phone number upon discovery of the first leak and called the emergency number as instructed by the landlord. The tenant moved out of the temporary rental unit at the end of August 2015 because she was told the one-bedroom unit was rented to another tenant starting September 2015.

The tenant denied that the landlord offered her another rental unit after the second flood.

Tenant's insurance would not have covered anything but her possessions.

The tenant installed a different door on the bathroom because the landlord would not rectify the situation. The tenant left the old door for the landlord to reinstall at the end of the tenancy. Also, the rental unit walls were left white and beige when she moved out.

Landlord's rebuttal

The tenancy agreement provides a clause with respect to insurance that provides the landlord is not responsible for any damages or losses to the tenant's property. The landlord was of the position that good tenant's insurance policy covers many types of losses beyond personal property.

The landlord has adequately compensated the tenant already and the tenant is not entitled to further compensation.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the tenant bears the burden to prove her claims against the landlord. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the tenant's claims.

As provided above, in order for the tenants to succeed in her claims against the landlord the tenant must demonstrate, among other things, that the landlord violated the Act, Regulations or tenancy agreement. Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law; and, is suitable for occupation by a tenant, having regard for the its age and character. Tenants are also entitled to exclusive use and quiet enjoyment of the rental unit as a term of the tenancy agreement and as provided under section 28 of the Act. A landlord's failure to provide the tenant with use and quiet enjoyment of the rental unit is a breach of contract on part of the landlord and a violation of section 28 of the Act.

Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides, in part:

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the

value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

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.

[Reproduced as written with my emphasis underlined]

It is undisputed that after the first flood the landlord determined it was necessary to have the tenant temporarily cease occupancy of the rental unit so as to facilitate major repairs and the tenant was undeniably deprived of use and enjoyment of the rental unit for the months of June 2015 through August 2015. Since the tenant did not have use of the rental unit for June through August 2015 I find it reasonable that she would not be required to pay rent for the rental unit since the water leak and resulting need for repairs were not the result of the tenant's actions. The tenant stayed elsewhere in June 2015 and did not pay rent to the landlord for June 2015 by agreement. For the months of July 2015 and August 2015 the tenant resided in a different rental unit owned/managed by the landlord and after a refund from the landlord I find the tenant paid the value of the one-bedroom unit she was provided for temporary use but that she did not in effect pay rent for the rental unit. Accordingly, I find the free rent for June 2015 is compensation for the tenant's loss of use of the rental unit for June 2015 but is not compensation to offset the tenant's loss of use or enjoyment for the months of September 2015 through November 2015 as suggested by the landlord.

The tenant returned to the rental unit for September 2015. The parties were in dispute as to whether the tenant did this on her own volition or whether she was advised that the temporary accommodation had been re-rented and she had to leave. I find it unnecessary to make a determination as to what the situation was that prompted her to return to the rental unit since the landlord did not take action to have her vacate again and the landlord accepted/required the full rent for the rental unit starting September 2015. The tenant paid the full monthly rent for the months of September 2015 through November 2015 even though the rental unit was still undergoing repairs. However, it is clear to me that the rental unit was suitable for occupation as the tenant did occupy it. The landlord described temporary disruptions to the tenant when bathroom fixtures

were installed and temporary disruptions do not generally warrant compensation to a tenant.

Upon review of the tenant's photographs, that the tenant submitted were taken in early November 2015, I see what appear to be relatively minor outstanding repair issues, such as: transition pieces missing between the carpet and vinyl flooring, missing ceiling fixtures and covers including exhaust fan cover, and missing trim. Although the rental unit may have been even less finished in September 2015 and October 2015 the tenant did not provide photographs of that and I find it difficult to determine the condition of the rental unit in those earlier months. Nevertheless, the outstanding repair issues were apparently not very temporary since they were still outstanding until late November 2015.

Given the lack of finished renovations for the months of September 2015 through November 2015 I am satisfied the tenant suffered some loss of use and enjoyment with respect to the other outstanding finishes. However, I find the tenant is certainly not entitled to receive a rebate equivalent to 100% of her rent as she requested in filing this Application or the lesser amount of 50% that she requested during the hearing. It is important to note that the tenant stated she seeks such an amount, in part at least, because "the landlord didn't care." Monetary awards to a party are intended to be restorative and I do not have authority to issue punitive awards. Therefore, based on the evidence before me, I award the tenant a nominal award of \$50.00 per month for the months of September 2015 through November 2015, or \$150.00.

As for the second flood, the tenant did not cease occupying the rental unit. Rather, the tenant remained in the rental unit while it underwent repairs. I am satisfied that the tenant suffered some loss of use and enjoyment of the unit while it was undergoing repairs. However, I am also satisfied that the tenant has been given some compensation for the second flood which as occupancy of the rental unit for the month of September 2016 without being charged any rent. Since the flood occurred in late May 2016 I find the tenant's use and enjoyment was reduced for four months and receiving one month of free of rent translates into compensation of 25% of the monthly rent for each of those months. The tenant did not provide photographs to demonstrate the extent of her losses despite her burden of proof and I find I am unsatisfied that she established an entitlement to compensation greater than the compensation the landlord already provided to her in September 2016. Therefore, I make no award for further compensation with respect to the second flood.

As for the landlord's position that the landlord did not pursue the tenant for any damages or loss with respect to the condition she left the rental unit at the end of the tenancy, I find the value of the landlord's losses were not quantified and there was no indication that at the end of the tenancy the landlord waived compensation for damages or loss in exchange due to the floods. Therefore, I did not consider this position further and the landlord remains at liberty to pursue the tenant for any such damages or loss by filing a Landlord's Application for Dispute Resolution if the landlord so chooses.

As for the landlord's argument that the tenant may have mitigated her losses had she carried a good tenant's insurance policy, I find that position is largely irrelevant to this case. The tenant did not seek compensation for damage or loss to her personal possessions. Nor, did she seek compensation for staying elsewhere during the repair of the flooded premises. Rather, I am satisfied that her claims are largely linked to having loss of use and enjoyment of the rental unit while repairs were on-going which would be breach of contract by the landlord and/or section 28 of the Act that would entitle the tenant to compensation from the landlord for those breaches.

The tenant had a limited amount of success in this application and I award the tenant recovery of 25% of the filing fee she paid, or \$25.00.

In light of all of the above, I provide the tenant with a Monetary Order in the total sum of \$175.00 to serve and enforce upon the tenant.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$175.00 to serve and enforce upon the landlord.

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: October 27, 2017

Residential Tenancy Branch