



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, MNDCT, OLC, RP, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for a monetary order in the sum of \$9010
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order for repairs.
- d. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided.
- e. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord in early December. The landlord acknowledged service of the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenants are entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. Whether the tenants are entitled to a repair order?

- d. Whether the tenants are entitled to an order that the rent be reduced for repairs, services or facilities agreed upon but not provided.
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on November 1, 2007. It was a one year fixed term but has become a month to month after the expiry of the fixed term. The present rent is \$1660 per month payable in advance on the first day of each month. The written tenancy agreement indicates the tenants paid a security deposit of about \$625 at the start of the tenancy. The tenants continue to reside in the rental unit.

The tenants seek compensation for the reduced value of the tenancy for the period October 22, 2016 to May 22, 2017.

The tenants rely on the following evidence:

- They testified they experienced a flood on October 22, 2016. It was a weekend and they could not report it to the landlord until October 24, 2016.
- The flood prevented them from enjoying their living room area. It was partitioned off by plastic. The contractors who did the repairs that a hose running from the area to their sink.
- They were not able to use the kitchen and prepare meals because of the presence of the hose. Essentially they did not have the use of the main floor for 7 months.
- The rental unit is about 1000 square feet. There are two bedrooms upstairs. For the most part during this period they would go directly to their bedrooms when they returned home from work or from being outdoors.
- They incurred greater expense by eating out or by using take out meals. The tenants are claiming \$1500 each for additional food expenses.
- The flooded area was in the location of the heaters. They were unable to use those heaters. Despite the fact that the landlord provided space heaters, it was still extremely cold in the rental unit as they problems disruption occurred over the winter months.
- The machines were used to extract the water and the noise from the machines inhibited their enjoyment.
- They produced a number of photographs showing the condition of the rental unit.
- They testified they contacted the landlord 26 times over the period inquiring about the progress and expressing their concern about the reduced value of the tenancy.

The landlords gave the following evidence:

- The tenants have already been paid \$800 in compensation for the reduced value of the tenancy. In addition the landlord made the following payments:
 - \$594 and \$479 for additional hydro expenses
 - \$977 additional costs to install hardwood floor as requested by the tenants.
- The Property Manager testified the problem area was the south wall and the tenants had the benefit of most of the living room. Further the extraction period lasted only two weeks.
- The tenants have received a benefit of about 25% of the value of the rent over the period as set out above.
- The loss of use of the kitchen area lasted only about one month.

Analysis

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.

Policy Guideline #6 includes the following:

“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.”

Policy Guideline #16 includes the following:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

...

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Application for a Repair Order

There is no need to make a repair order as the repairs have been completed. Similarly there is no need to make an order that the landlord comply with the Act, regulations and/or tenancy agreement.

Application for a monetary order and an order for a Reduction of Rent:

The evidence of both parties lacked specificity. The tenants failed to keep a daily log of the condition of the rent unit and failed to provide receipts for alleged food expenses. The landlords failed to provide evidence from the contractors or someone who saw the rental unit on a regular basis. However, based on the evidence presented I make the following determinations:

- The rent was \$1660 per month.
- The flood caused a significant reduction of the use and enjoyment of the rental unit. Essentially it limited the use of the living room for about 7 months. It also limited the use of the kitchen for much of that period. It was winter for much of the time and the tenants experienced a reduced value because of the lack of heat.
- I accept the evidence of the tenants to that of the Property Manager as to the extent, length and intensity of the disruption. The tenants provided first hand evidence including photos. The Property Manager's evidence was not sufficient specific as to the limitation of the disruption and did not include corroborating evidence from contractors or others. I determined there was a major problem for 6 months and a reduced problem for the last month.
- The tenants failed to present evidence in the form of bills and receipts of additional food expenses. I determined the tenants failed to prove their claim of \$3000 for additional food expenses caused by the need to eat out or buy take out food.
- In the circumstances I determined the tenants are entitled to a reduction of rent in the sum of \$4980 (based on 50% of the rent paid for 6 months) and \$415 (25% of the rent for the last month) for a total of \$5395
- I do not accept the submission of the landlord that the tenants have already been sufficiently compensated. The payment of \$800 must be deducted from this award. However, I find that the payment of the additional hydro costs and the upgrade of the flooring is not a benefit that should be applied against this award.
- In summary I determined the tenants have established a claim against the landlord in the sum of \$4595 (\$5395 – \$800 = \$4595) for the reduced value of the tenancy and breach of the covenant of quiet enjoyment.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$4595 plus the sum of \$100 in respect of the filing fee for a total of \$4695.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: February 19, 2018

Residential Tenancy Branch