



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

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 damages or other money owed and to recover the filing from the landlord.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 damages or other money owed?

Background and Evidence

The parties agreed that the tenancy began on June 1, 2009. Rent in the amount of \$1,452.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00.

The tenant claims as follows:

a.	\$100.00 per month for storage and laundry for 40 months	\$4,000.00
	Filing fee	\$ 100.00
	Total claimed	\$4,100.00

The tenant testified that there has been flooding in the common areas that have affected the hallway, laundry area and storage area since 2014. The tenant stated that they cannot give specific date prior to 2017.

The tenant testified that they notified the landlord in July 2017, by email that the basement flooded. Filed in evidence is a copy of email.

In the email the landlord responded

“Yes I do someone left the hose running in the back yard.”

[Reproduced as written]

The tenant testified that they notified the landlord on October 18, 2017, that there was another flood and there was ongoing flooding from December 2, 2017, until the problem was resolved in March 2018. Filed in evidence are emails. Filed in evidence are photographs.

The tenant testified that they should be entitled to compensation for the loss of the storage area at the rate of \$50.00 per month for the last 40 months for a total of \$2,000.00.

The tenant testified that as a result of the wet floor in the storage area they had to place their belongings in plastic bins in order to protect them and they could not use the storage area for the purpose they would have otherwise.

The tenant testified that they should be entitled to compensation for the loss of the laundry at the rate of \$50.00 per month for the last 40 months for a total of \$2,000.00.

The tenant testified that the floor in the laundry room, and hallway were wet. The tenant stated that they would have to wear boots, and it was inconvenient when going to the parking area.

The landlord testified that they have done a lot of work and troubleshooting to find where the water source was coming from. The landlord stated the basement area is below the ground surface and they were making every effort to determine where the leak was coming from.

The landlord testified that they though the problem was the sump pump in the laundry area, which they replaced; however, when it later rained the basement flooded again.

The landlord testified that they then had the drain tile scoped and they found that there was a section of the pipe broken, which they had that area dug up and the drain tile repaired. The landlord stated that they though the problem was resolved.

The landlord testified that after repairing this portion of the drain tile the water leak continued, when it rained. The landlord stated that they finally replaced two (2) other sump pumps on the property. The landlord testified that they did everything to find the

source of the leak and at considerable cost. The landlord stated that the problem was resolve finally in March.

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. In this case, the tenant has the burden of proof to prove their claim.

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 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to 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.

In this case, the tenant seeks compensation going back to 2014; however, I find the tenant has failed to mitigate as they must do whatever is reasonable to minimize the loss. Therefore, I will only consider the tenant's claim from July 2017 to March 2018.

The evidence of the tenant was the basement flooded in July 2017; however, that appears to be from someone leaving the hose on outside. I find the tenant has failed to prove a violation of the Act by the landlord.

I accept the evidence of the landlord that the basement is below ground and to find the water leak was not a simple task. The landlord replaced portions of the drain tile, and replaces three (3) sump pumps in order to rectify the problem. I find landlord took reasonable step to resolve the problem as required by section 32 of the Act within reasonable time frame due to the nature of the leak.

While I accept this was inconvenient to the tenant, this was temporarily while the landlord was trying to resolve the issue of the water. Further, the tenant was using both the storage area and the laundry facilities during this time. The photographs filed in evidence show that the flooding was minor. I find the tenant has not proven they suffered a loss. Temporary inconvenience is not grounds for compensation. Therefore, I dismiss the tenant's application without leave to reapply.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 19, 2018

Residential Tenancy Branch