



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for a reduction in the value of the tenancy agreement, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Is the tenant entitled to an order to allow him to reduce rent for a reduction in the value of the tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2015 on a fixed term until July 30, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$2,550.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,200.00 at the start of the tenancy, which the landlord still retains in trust.

On July 8, 2017 a leak caused by a third party occurred in the building stairwell. As a result, four units including the unit subject to this dispute were flooded. To allow repair of the flood damage, the tenant temporarily vacated the unit on July 31, 2017. The tenant's insurance covered his temporary accommodation until October 30, 2017, at which time the tenant returned to reside in the rental unit.

The tenant seeks the following monetary compensation;

Item	Amount
Insurance Deductible for Temporary Accommodation	\$1,000.00
Increased Insurance Premium	\$60.00
Filing Fee	\$100.00
Total Claim	\$1,160.00

The tenant held the position that the effects of the flood on his unit constituted a breach of his quiet enjoyment which makes the landlord liable for any flood related costs incurred by him. In support of his position, the tenant has provided copies of his insurance premium from 2017 and 2018. In reply, the landlord testified that because the flood was not due to his negligence, he was not liable for the tenant's deductible or alleged increased insurance premiums.

The tenant seeks the following rent reduction;

Period	Date	Pro-Rated Rent	Percentage	Amount
Period 0	July 1-8	\$634.84	0%	\$0.00
Period 1	July 9-18	\$793.55	90%	\$714.20
Period 2	July 19-31	\$1,031.61	75%	\$773.70
Total Claim		\$2,460.00		\$1,487.90

The tenant testified that during period 1, he endured loud dehumidifiers and excessively hot conditions as he was instructed to keep the windows closed. He testified that during period 2, the unit remained damaged and dirty. The tenant has provided photographs as part of his documentary evidence. The landlord acknowledged that the living conditions after the flood were unpleasant. The landlord testified that he offered to terminate the tenancy but the tenant refused. The landlord testified that he offered the tenant a 25% rent reduction, but again the tenant refused. The landlord testified that repairs could have been started sooner, had the tenant vacated earlier. In reply, the tenant contended that he would have vacated sooner, had the landlord provided immediate alternate accommodation.

Analysis

Monetary Compensation

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference

Residential Tenancy Policy Guideline #6, establishes that;

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

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 of a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find the tenant has failed to meet his burden in proving the landlord breached his right to quiet enjoyment. There was no dispute that the damage and subsequent repair work was the result of the actions of a third party, and not the negligence of the landlord. As evidenced by the tenant's own testimony, the landlord took immediate corrective action

by placing dehumidifiers in the unit. The incident was a one-time event that led to the discomfort and inconvenience of having to temporarily vacate. I find that pursuant to section 32 of the *Act*, the landlord had a right to repair the flood damage and the required vacant possession resulting from this obligation is not a breach of quiet enjoyment. As such, I find the landlord is not obligated to pay for alternate accommodation in the form of an insurance deductible or increased premium. The tenant's claim for a monetary order is dismissed without leave to reapply.

Rent Reduction

Section 65 of the *Act* allow me to issue a monetary award to reduce past or future rent by a tenant to a landlord if I determine that there has been a reduction in the value of a tenancy agreement.

While I find the landlord did not breach the tenant's right to quiet enjoyment, I find that despite the best efforts of the landlord the tenant suffered a reduction in the value of the tenancy agreement as a result of the flood. However, I do not accept the tenant's submission that the value of the rental unit was reduced by 90%, during period 1 and 75% during period 2, as he was still able to use the rental unit throughout both these periods.

With consideration of the seriousness of the situation, the degree to which the tenant was deprived of the full value of the tenancy agreement, and the duration of the loss, I value the diminishment for period 1 as 70% and the diminishment for period 2 as 50%. As such, I find that the tenant is entitled to retroactive rent abatement in the amount of \$555.49 for period 1 and \$515.81 for period 2 for a total of \$1,071.30. I consider this amount reasonable given the impact that the flood had on the tenant.

As the tenant was successful in this application I find he is entitled to recover the \$100.00 filing fee for a total monetary award of \$1,171.30.

Conclusion

I dismiss the tenant's application for a monetary order in relation to a breach of quiet enjoyment, without leave to reapply.

I order the tenant to deduct \$1,171.30 from future rent payable to the landlord at the rental unit, in full satisfaction of the monetary award for the loss in value of the tenancy agreement for the period from July 9, 2017 to until July 31, 2017.

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: December 14, 2018

Residential Tenancy Branch