Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

At the start of the hearing I confirmed service of hearing documents. The landlord confirmed receipt of the tenant's hearing package. I noted that I was not in receipt of a written submission or evidence from the landlord. The landlord's agent confirmed that no written submissions or evidence were made by the landlord and that the landlord's agent intended to provide the landlord's position orally during the hearing.

The tenancy ended on August 31, 2016 and the tenant filed this Application on August 30, 2018 which is within the statutory time limit for making a claim. Accordingly, I proceeded to hear the tenant's claims against the landlord.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for the landlord for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy started on March 1, 2015 and ended on August 31, 2016. The tenant was required to pay a monthly rent of $765.00 at the end of the tenancy. The rental unit was described as a small two bedroom apartment.

The tenant described events surrounding a flood of water in the rental unit in February 2016. The landlord's agent stated that she was not the property manager for the subject property at that time but that she was able to determine from the landlord's records that a flood occurred in February 2016. The landlord's agent did not offer any objection to the sequence of events or

description of the flood damage as put forth by the tenant. Below, I describe the tenant's unopposed submissions concerning the flood.

On February 12, 2016 the tenant awoke from sleeping and when he entered the bathroom he found the water supply line had detached from the toilet tank and water was spilling out of the toilet tank and the water supply line. The tenant turned the valve to the water supply line off and called the landlord's office. The landlord had a repairman attend the unit to repair the toilet. The flooring in the bathroom, living and master bedroom were also removed and drying machines installed. The reinstallation of the flooring and restoration work was completed on April 13, 2016. The tenant went without a functional bathroom for three days, during which time he used the facilities at his workplace and a nearby restaurant. The tenant was able to live in the rental unit during the restoration although he had to live on cement floors, stepping over a large roll of carpeting, and many of his belongings had to be moved to the smaller bedroom.

The tenant sent a letter to the landlord on August 13, 2018 seeking compensation from the landlord. The landlord did not respond to the tenant's letter and the tenant proceeded to file this Application on August 30, 2018.

In filing this application, the tenant requested compensation to $1,530.00 which is the equivalent of two month's rent on the basis the restoration took two months to complete. During the hearing, the tenant reduced his claim to $765.00 in recognition that he was still able to reside in the rental unit during the restoration process.

The landlord was of the position the tenant is not entitled to any compensation.

The landlord's agent submitted that she went through the landlord's records and found no evidence that the tenant sent an email to the former property manager to ask for compensation or a rent reduction. The tenant responded by stating he did not send such an email to the former property manager but that he did speak to the former property manage on the phone and the property manager was not agreeable to giving the tenant any compensation.

The landlord also took the position that the tenant was able to live in the rental unit during the flood restoration and that the rental unit remained fully functional during the restoration. The landlord was of the position that if the rental unit was in such a bad state the tenant ought to have gone through his tenant's insurance policy and acquired alternative accommodation.

The tenant responded by stating he did not go through his tenant's insurance policy as he did not think the repairs would take as long as they did and that he did not think it was worth filing a claim, relocating, and paying a deductible. The tenant stated that he did not know how much his deductible was but that it was rather high as he paid a low premium.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the other party violated the Act, regulations, or tenancy agreement; that the violation caused the party making the application to incur damages or loss as a result of the violation; the value of the loss; and, the party making the application did whatever was reasonable to minimize the damage or loss.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment of the rental unit and residential property which includes exclusive possession of the rental unit, freedom from unreasonable disturbance and significant interference. Section 91 of the Act also stipulates that the common law also applies to landlords and tenants meaning a landlord or tenant may seek compensation from the other party for breach of contract.

Residential Tenancy Branch Policy Guideline 6: *Right to Quiet Enjoyment* provides information and policy statements with respect to a tenant's right to quiet enjoyment and compensation payable for loss of quiet enjoyment. Below, I have provided excerpts from the policy guideline:

> 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 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.
>
> A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> **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). <u>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.</u>
>
> <u>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.</u>

[My emphasis underlined]

I was provided unopposed submissions that the rental unit had a functional bathroom, carpeting in the living room and master bedroom, and vinyl flooring in the bathroom prior to the flood of February 12, 2016 and that as a result of the failure of the toilet water supply line on February 12, 2016 the bathroom was not functional for three days and the flooring in these areas was removed until the restoration was complete on April 13, 2016. I also accept the unopposed submission and find it reasonably likely that several of tenant's possessions had to be moved to the smaller bedroom to accommodate the removal and re-installation of flooring.

I find that two months of restoration work is more than temporary inconvenience and that there was a considerable period of time where the tenant was without flooring in key rooms and that many possessions were stored in another room. While the water supply line failure may not be any fault of the landlord, it remains that the tenant suffered a loss of use and enjoyment of the rental unit that was bargained for and that is a breach of contract for which the tenant may be compensated. Therefore, I find the tenant is entitled to be compensated for the loss of use and enjoyment of the rental unit.

As for the landlord's submission that the tenant did not email the former property manager to seek compensation at the time of the flood has no bearing on whether the tenant is entitled to compensation. There was no suggestion the landlord would have made the repairs any faster had the tenant asked for compensation at that time.

As for the landlord's argument that the rental unit remained functional during the restoration, I accept that the rental unit could be used as living accommodation as the tenant demonstrated that to be so by continuing to live in the unit during the restoration. However, as I have found above, I find the tenant did suffer diminished use and enjoyment of the unit and I find that an award equivalent to a portion of the rent is in order.

As pointed out by the landlord, the tenant could have gone through his insurance policy to mitigate losses if the condition of the unit was so bad as to warrant the compensation the tenant seeks. I accept that argument as logical and reasonable and it was the tenant's decision not to relocate to temporary accommodation and pay an insurance deductible; therefore, I limit the landlord's obligation to compensate the tenant to the amount of his insurance deductible.

In this case, the tenant stated he did not know what his insurance deductible but that it was high. Since the landlord had not made written submissions prior to the hearing with respect to making an insurance claim, I accept that the tenant did not anticipate having to produce a copy of his tenant's insurance policy, especially since he did not make a claim. However, in the absence of evidence of a high deductible I provide a nominal award of equivalent to a typical insurance deduction in the amount of $500.00.

The tenant's claim had merit and I further award the tenant recovery of the $100.00 filing fee he paid for this Application.

In keeping with all of the above, I provide the tenant with a Monetary Order in the amount of $600.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of $600.00 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: January 04, 2019

Residential Tenancy Branch