



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FFT

Introduction

On January 23, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”), seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the respondent Ms. S.W. submitted that she is not the Landlord and she did not want to participate in the hearing. She submitted that her authority to act as an agent for the Landlord was revoked after the Tenant moved out of the rental unit.

Ms. S.W. provided affirmed testimony that she received the Notice of Dispute Resolution Proceedings documents from the Tenant and testified that she contacted the owner of the property to inform them that the Notice was received. Ms. S.W. testified that she forwarded the Notice package to the owners of the rental property.

The Tenant testified that Ms. S.W. was the agent for the Landlord and she was present at the time the tenancy agreement was signed and was also involved with performing duties under the tenancy agreement.

Ms. S.W. testified that her involvement as an agent for the property owners was in a limited capacity and she cannot provide information about the Landlord.

I have considered whether Ms. S.W. is the Landlord. The Act defines a Landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or*
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

- (i) is entitled to possession of the rental unit, and*
- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

(d) a former landlord, when the context requires this;

After considering the submissions before me, I find that Ms. S.W. was the owner's agent who permitted occupation of the rental unit and performed duties under the tenancy agreement. I find that she was the agent for the Landlord for the duration of the tenancy and she is considered to be the Landlord in this hearing.

Ms. S.W. was informed that I find her to be the Landlord and if she chooses to not participate or leave the hearing, the hearing will proceed and the Tenants' application will be un-contested.

Ms. S.W. remained in the hearing and participated fully.

Issues to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2018, as one year fixed term tenancy that could continue thereafter on a month to month basis. Rent in the amount of \$1,700.00 was due by the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 was paid to the Landlord. The rental property contains a house with two suites. The Tenant occupied the lower unit.

The Tenant testified that on October 24, 2018, she noticed a foul smell coming from the powder room and discovered that there was a sewage leak in her rental unit. The Tenant testified that she immediately reported the leak to the Landlord's agent.

The Tenant testified that at approximately 6:00 pm a plumber and the property owner's husband attended the unit. The Plumber fixed the problem and mentioned to her that the unit is not fit to live in due to the leak of human waste.

The Tenant testified that the owner's husband left the unit without making arrangements to clean or sanitize the rental unit. The Tenant testified that the waste water was cleaned up by her and her daughter.

The Tenant testified that she was concerned about the waste water and cleanliness of the unit so she contacted the Landlord on many occasions to have the unit properly sanitized. She testified that in November 2018, the owner's husband attended the unit with a drying machine and left it running in the powder room for seven days.

The Tenant testified that in November 2018 she noticed the tiles on the floor beginning to lift. She testified that she contacted the Landlord; however, the Landlord did nothing.

The Tenant testified that after she made numerous complaints the Landlord finally sent a regular cleaning person rather than someone qualified to sanitize the unit.

The Tenant testified that a few weeks later on December 21, 2018, there was a second sewage leak. The Tenant notified the Landlord about the second leak and demanded that the unit be properly cleaned and asked for air quality tests. The Landlord sent a plumber to look at the problem.

The Tenant testified that on December 23, 2018, an insurance company came to the unit and assessed the damage. The Tenant testified that the walls and cupboards needed to be removed and there was waste water under the kitchen floor.

The Tenant testified that the Landlord sent her a note stating that the tenancy must end. She testified that the Landlord asked her to leave immediately. The Tenant had difficulty finding a place to go but moved out of the rental unit a few days later.

The Tenant is seeking compensation of \$7,000.00 from the Landlord. She stated that she wants to recover the full amount of rent she paid for the months of October, November and December 2018. She testified that she wants \$400.00 for the cost to remove her possessions. She testified that she wants \$2,000.00 for the inconvenience and for her suffering. The Tenant testified that she has asthma and a weak immune system and she started to have breathing issues. She testified that she reported this to the Landlord who did not take it seriously.

The Tenant submitted that she was inconvenienced by having to clean up after the first sewage leak and that she contacted the Landlord on numerous occasions to try and get the Landlord to sanitize the unit. She testified that she was ordered to leave the unit with little notice.

In reply, the Landlord's agent Ms. S.W. ("the Landlord") testified that on October 24, 2018, she received a text message from the Tenant about the sewage water leak. She testified that she notified the owner of the property and sent a plumber to the unit. The Landlord testified that there was a problem with a sump pump. The sump pump was not working due to an electrical issue.

The Landlord acknowledged that on October 29, 2018, she received an email from the Tenant regarding cleaning the unit. The Landlord testified that the property owner informed her that they would send a professional cleaning service to the unit.

The Landlord testified that on December 21, 2018, she received a text message from the Tenant about flooding. She testified that she notified the owner about the leak and sent a plumber to the unit. The Landlord testified that there had been a large storm in the city and the power was out. The Landlord testified that the plumber informed her that the flooding was very bad and the plumber could not do anything to fix the problem because the power was out.

The Landlord testified that the Tenant reported that she was worried about her health. The Landlord testified that she informed the Tenant that she could not live in the unit because there was too much damage. She testified that she asked the Tenant to leave as soon as possible.

The Tenant replied she agrees that the condition of the unit was so poor that she could not live in the unit.

The Landlord testified that the property owner's husband told the Tenant to get her possessions out of the unit immediately or it would be put out on the street.

The Landlord testified that the following amounts were refunded to the Tenant:

Hydro usage	\$11.27
Rent from Dec 22 to January 1	\$603.24
Security deposit	\$850.00
Pet deposit	\$850.00

The Landlord testified that the Tenant did not have Tenants' insurance; and the Landlord is not responsible to provide any additional compensation.

Analysis

Residential Tenancy Guideline #16 Compensation for Damage or Loss provides

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *loss of access to any part of the residential property provided under a tenancy agreement;*
- *loss of a service or facility provided under a tenancy agreement;*
- *loss of quiet enjoyment (see Policy Guideline 6);*
- *loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *damage to a person, including both physical and mental.*

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.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that section 32 of the Act provides that the Landlord must provide and maintain a rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law and make it suitable for occupation by a Tenant.

I find that the Landlord failed to take appropriate action to clean and sanitize the rental unit after the Landlord was made aware that there had been a sewage leak. I find that the Landlord breached section 32 of the Act.

I find that the Tenant suffered a loss of value of the tenancy beginning on October 24, 2018 until the day she moved out of the unit. I find that the Tenant is entitled to receive compensation from the Landlord for a loss of enjoyment of the unit and damages to the Tenant.

I find that the Tenant contacted the Landlord on many occasions to have the problem corrected and the Landlord failed to respond to clean the unit in an appropriate or timely manner. The Tenant was put in a position where she had to live in un-sanitized rental unit.

I find that the Tenant was deprived of the use of part of the premises through no fault of her own and is entitled to damages. While the leak is not attributable to negligence on the part of the Landlord, I find that the Landlord is responsible to compensate the Tenant in the form of an abatement of rent. I also find that the Landlord ordered the Tenant to move out of the unit with little notice given to her, and without providing any assistance.

I find that the Tenant continued to live in the rental unit until December 23, 2018, and for the most part she had full use of the rental unit during the tenancy. I find that the Tenant is not entitled to recover the full amount of rent paid after the sewage leak occurred. I find that a reasonable amount of compensation would be in the range of 10% to 30% of the monthly rent.

With respect to the Landlord's submission that the Tenant did not have Tenant's insurance, I find that insurance would apply to any damage to the Tenant's possessions. However, in the case before me, the Tenant is not seeking compensation for damage to her possessions. The Landlord is responsible to provide and maintain a rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law and make it suitable for occupation by a Tenant and the Tenant is entitled to be put in the same position as if the damage or loss had not occurred.

Based on the circumstances above, I award the Tenant 30% of the rent that was paid beginning October 24, 2018, until December 21, 2018, the day she moved out of the unit.

I find that the Tenant is entitled to the following monetary amounts:

<u>Dates</u>	<u>Days</u>	<u>Award</u>
October 24 – 31, 2018	8 days = \$438.64 x 30%	\$131.59
November 2018	Full month \$1,700.00 x 30%	\$510.00
December 2018	21 days = \$1,151.43 x 30%	\$345.42

The Tenants claim for compensation for inconvenience and suffering is included in the awards above. The Tenant's claim for an additional \$2,000.00 is dismissed.

I find that the Landlord already compensated the Tenant the amount of \$11.27 for using the hydro utilities.

I also find that the Tenant is entitled to compensation for moving costs. Since the Tenant did not prove the value of her loss by providing a receipt, I award the Tenant a nominal award of \$200.00 for her moving costs.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant a monetary order in the amount of \$1,287.01. I grant the Tenant a monetary order in the amount of \$1,287.01. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant's application for monetary compensation due to a sewage leak in the rental unit was partially successful. I grant the Tenant a monetary order in the amount of \$1,287.01. This monetary order must be served on the Landlord and may be enforced in Provincial Court.

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: May 22, 2019

Residential Tenancy Branch