



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. Both named tenants appeared and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant TR (the "tenant") primarily spoke for both co-tenants.

The tenant testified that they served their application for dispute resolution and evidence on the landlord by registered mail sent on March 4, 2019. The tenants provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenant's application and evidence on March 9, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in July 2016 and ended on March 13, 2017. The monthly rent was \$1,500.00 payable by the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and has subsequently been returned to the tenants.

The rental unit is a detached home and included a basement where the tenants were permitted to place their clothes washer and dryer. At the start of the tenancy the landlord advised the tenants that the basement experiences periodic flooding and a sump pump has been placed to deal with the excess water.

The tenants gave evidence that the rental unit experienced flooding and plumbing issues from about August 2017 and regularly thereafter. The tenants said that the flooding was not simply rain water but sewage and waste water backing up into the rental suite. The tenants advised the landlord of the issue but the landlord simply advised the tenants to treat the waste water with bleach and activate the pump to remove water.

The tenants testified that as a result of the consistent plumbing issues and particulates from the dirty water contaminating the air in the rental suite, all of the members of the tenants' family experienced health problems. The tenants gave evidence that the tenants missed several days of work and suffered a loss of income due to the condition of the suite and their children missed numerous days of school.

The tenants testified that their washer and dryer were no longer able to be used as a result of the flooding. The tenants contacted plumbers and waste water professionals to deal with the ongoing issue as the landlord failed to take action despite numerous requests.

The tenants say that the consistent flooding and water issues caused great impact on their health and ability to enjoy the rental suite. The tenants gave evidence that they missed numerous days of work and school, curtailed their regular activity and experienced detrimental health effects for many months after the tenancy had ended.

The tenants submitted into documentary evidence copies of receipts and invoices showing various costs they attribute to the tenancy and a letter from Fraser Health Authority to the landlord dated March 8, 2017 stating that the rental unit is in contravention of health standards.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 32 of the *Act* provides that:

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.

It is evident from the evidence of the tenant including their submissions and the letter from Fraser Health Authority dated February 8, 2017, that the landlord failed to maintain the rental property in a habitable condition. I find that the landlord's duty to maintain the property is not one that they can contract out of, foisting the duty on the tenants occupying the suite.

Based on the submissions I find that the landlord was aware of the deficiencies in the rental unit and its drainage issues. I find that simply informing the tenants that the suite is prone to flooding and plumbing issues does not alleviate the landlord from their duty to maintain the rental unit in a habitable state. I find that the landlord was aware of the issues with the rental suite and nevertheless failed to take reasonable actions to ensure maintain the property in a state that complied with the health, safety and housing standards required by law.

I accept the submissions of the tenants that they incurred damages and loss as a result of the landlord's negligence. However, I find that there is insufficient evidence in support of the full amount claimed by the tenants.

Items such as photocopies, fuel and mailing costs are incurred as part of pursuing an application and not recoverable as damages or loss. Consequently, I dismiss the portion of the tenant's application seeking these items.

I accept the tenant's undisputed evidence that the washer and dryer they had were made unusable due to the water ingress. I accept the evidence of the tenants that the cost of the appliances was \$1,402.41. Accordingly, I issue a monetary award in this amount to the tenants.

I accept the evidence that the landlord failed to arrange for professional plumbing and water treatment when the tenants reported the flooding issue. I find that the tenants acted reasonably in arranging for professional services to attend and perform work on the rental suite. Based on the nature of work documented in the invoices from the third party professionals I find that the scope of work was reasonable under the circumstances. The tenants claim an amount of \$250.11 for the work performed. I find that the tenants have established on a balance of probabilities that this cost was incurred as a result of the landlord's inaction and issue a monetary award in this amount.

The tenants seek to recover the entirety of rent paid during the tenancy and all moving costs. Effectively, they seek to reverse all of the payments made towards this tenancy and put them in the position they would be in had this tenancy not occurred. I find that these are not damages or loss recoverable under the Act. While the tenants may have experienced some hardships during the tenancy, they resided in the rental unit and continued to have use of much of the suite throughout the course of the tenancy. While the tenants submit that they were induced into moving into the rental unit by the landlord's false representations, I find that there is insufficient evidence to support this position. I dismiss this portion of the tenants' application.

The tenants claim damages and loss for the hours missed from work, school and activities by their family members. The tenants have submitted a comprehensive log of the time each family members has spent ill and claim damages and loss for these hours. Additionally, the tenants submit that they suffered health consequences due to the condition of the suite and have submitted numerous receipts for medication and treatment which they attribute to the tenancy.

I find there is insufficient evidence to causally link the amounts claimed to the breach by the landlord. I find that the online articles submitted into evidence are insufficient to establish that the tenants experienced symptoms that were caused by the landlord's

negligence. I find that there is insufficient evidence to link the findings that bacteria was present in the rental unit with the specific losses claimed by the tenants.

While the tenants submit that the family members were absent from school or work for multiple days I find that there is insufficient evidence showing that the dates missed were a result of the landlord's actions. Furthermore, I find that the tenants have provided little evidence to show that the amounts claimed for the various absences are an accurate figure representing their losses.

Similarly, I find that the tenants have not established that the medical receipts submitted into documentary evidence arise as a result of the negligence of the landlord. I find that receipts for prescriptions and medical devices are insufficient to establish that they were required due to the breach by the landlord and not for any other reasons or pre-existing conditions. I find that there is insufficient medical evidence to establish on a balance of probabilities that the medical receipts arise due to the landlord's breach. While I accept that there was a finding of bacteria in the suite, I do not find that it naturally flows that the losses claimed by the tenants are attributable to that finding. I find that the conclusion suggested by the tenants, that their losses are the result of the landlord's breach to merely be one of a number of possible inferences. As such, I find that the tenants have not met their evidentiary burden.

I find that the tenants have not met their evidentiary burden of showing on a balance of probabilities that the losses they claim are a result of the landlord's action or negligence. Consequently, I dismiss this portion of the application.

The tenants made an unspecified claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a 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 covenant of 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.

I accept the evidence that the water ingress allowed by the landlord caused a significant detrimental impact to the tenants right to quiet enjoyment. This was not a case of rainwater but sewage bubbling up into the rental unit. I accept the evidence of the tenants that this was an ongoing issue for the duration of the tenancy and that the landlord failed to take reasonable action. The tenants gave evidence that contaminants from the sewage would be circulated through the air system. I accept the evidence that the tenants lived with a perpetual unpleasant odor throughout the rental suite. I further accept the evidence of the tenants that they spent considerable time dealing with both the plumbing issue and attempting to have the landlord make repairs.

Based on the foregoing I find that an appropriate award for loss of quiet enjoyment to be \$2,700.00, approximately 20% of the monthly rent for each of the months of the tenancy.

As the tenants were successful in their application they may recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$4,452.52 under the following terms:

Item	Amount
Loss of Quiet Enjoyment	\$2,700.00
Washer & Dryer Replacement	\$1,402.41
Cost of Plumbing and Water Inspection	\$250.11
Filing Fee	\$100.00
Total Monetary Order	\$4,452.52

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that 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: June 17, 2019

Residential Tenancy Branch