



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

In the first application the landlord seeks a monetary award for repair costs related to a water leak in the rental unit and for an award for rent.

In the second application the tenant seeks return of her security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”) and to recover rent paid for a period when the rental unit was not fit for habitation. A claim to recover \$85.00 for “emergency repair” items was withdrawn at hearing.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant responsible for the landlord’s repair costs or for unpaid rent? Does the s. 38 doubling penalty apply to the tenant’s security deposit? Is the landlord responsible to return the tenant’s rent in the circumstances of this case?

Background and Evidence

The rental unit is a one bedroom condominium townhouse. There is a written tenancy agreement. The tenancy started in March 2018. The last rent was \$1580.00 per month, due on the first of each month, in advance. The landlord holds a \$770.00 security deposit.

In April 2019 the rental unit was suffering the ingress of mice, and perhaps even rats according to the tenant. The tenant had been advised that a "signal amplification" cable that ran through the weather stripping of the front door might have a gap that permitted vermin entry. The tenant suggested to the landlord that re-routing the cable through a wall might solve the problem and the landlord agreed. The tenant indicated her dad could do the work and the landlord agreed to that too. The landlord agreed to pay for out of pocket expenses incurred for the work. That is the \$85.00 claim the tenant made in her application. The landlord has paid it as promised and thus the withdrawal of the claim.

The tenant's dad commenced to do the work on April 24. Unfortunately, while drilling a hole in the wall through which to run the cable, he drilled into a water supply pipe causing it to leak water profusely.

The tenant called 911 and the fire department came. Somehow a representative of the strata also showed up on sight. It appears that no one but the landlord knew where the water shut off valve was but the landlord was not contacted. A considerable period of time ensued, perhaps half an hour, while the water shut off valve was located, resulting in considerable damage, particularly to the flooring in the rental unit.

The rental unit was uninhabitable. The tenant was relocated by her insurer pending repairs and the landlord commenced repairs. The landlord paid \$1210.60 for the plumber the strata person had called to attend on April 24. She paid \$1312.50 for drywall repair and \$3500.00 for replacing the laminate and carpeting.

The landlord also anticipates a bill for \$2000.00 for the drying machine the tenant or her insurer arranged on April 24. She has not received any bill so far.

The landlord says the rental unit was ready for the tenant to move back into on May 13 or so. The tenant disagrees and says the appliances were not in proper position and the rental unit appeared like a construction zone. In any event, the tenant did not move back in but stayed with friends or relatives, her belongings in storage.

On May 15 the tenant gave the landlord written notice purporting to end the tenancy June 15.

The tenant had paid the April rent and the May rent. She notes that it is a landlord's responsibility to provide habitable accommodation. She says the landlord failed to do so and she seeks one and a half month's rent back.

Analysis

Responsibility for Leak Damage and Loss

The evidence clearly shows that the tenant's father was negligent in drilling a blind hole through the wall and into the water pipe. The evidence raises the question of who is vicariously responsible for that negligence; the tenant or the landlord? This question was not raised by the tenant at hearing. I note that in a document she submitted but did not refer to at the hearing, her insurer wrote to the landlord May 15, 2019 on a "without prejudice" basis that the tenant offered to help on a merely gratuitous basis and that the person actually doing the work was not a tenant and was only trying to help.

It is my determination that the tenant is responsible for the repair and related costs incurred by the landlord as the result of the actions of the water leak. It was her suggestion to move the cable. It was she who agreed to undertake the work and it was she who arranged for her father to do it. It was implicit that the work would be carried out in a reasonable and workmanlike fashion but the work was clearly performed otherwise.

As a result, the tenant is not entitled to recover costs and loss related to her displacement from the rental unit during repairs. During those repairs the tenancy continued and the tenant was responsible to make rent payments in the ordinary course, as required by her tenancy agreement. Her claim to recover that rent during the period of the repairs must be dismissed.

Landlord's Claim for Repairs

Regarding the landlord's monetary claim for repairs, I dismiss her claim of \$2000.00 for the cost of the drying machine. She did not contract for this piece of equipment and she has not received a bill for it. I grant her leave to re-apply in the event a bill is presented to her.

I award the landlord the plumber's bill of \$1210.60, which she has paid. This is a bill for the plumber apparently arranged by the strata agent. It is for work directly related to the water leak the tenant is responsible for and so the tenant is responsible for this bill.

I award the landlord \$1312.50 for drywall repairs contracted for by her. I award it on the same basis as the plumber's bill.

I award the landlord \$3500.00 for money spent to replace laminate flooring and carpet on the same basis.

Landlord's Claim for Rent

Despite water damage and repair work, this tenancy continued. The tenant was free to end it by giving a one month Notice to End Tenancy pursuant to s. 45 of the *Act*. Such a Notice must be effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

As the rent was due on the first of each month in this tenancy, the tenant's Notice, given in May, could not properly end the tenancy until the end of the following rental period, namely June 30.

The landlord is entitled to the rent that came due on June 1 and I award her \$1580.00.

Conclusion

The landlord entitled to an award of \$7603.10 plus recover of the \$100.00 filing fee.

I authorize the landlord to retain the \$770.00 security deposit in reduction of the award. I reject the tenant's request for a doubling of the deposit money under s. 38 of the *Act*.

Clearly the landlord made application within the fifteen day period prescribed by s. 38 of the *Act*.

The landlord will have a monetary order against the tenant in the amount of \$6933.10.

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: September 05, 2019

Residential Tenancy Branch