Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The manager of tenant relations (the "manager"), the director of property management (the "director") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenant personally served the landlord with his application for dispute resolution on September 11, 2019. I find that the tenant's application was served on the landlord in accordance with section 89 of the *Act.*

Issue to be Decided

1. Is the tenant a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and is currently ongoing. Subsidized monthly rent in the amount of $294.00 is payable on the first day of each month. A security deposit of $364.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is an apartment in an apartment building.

Both parties agree to the following facts. On August 21, 2019 a construction worker, working on installing cellular equipment, broke a water main when working in the attic of the subject rental building. Numerous apartments, including the subject rental apartment were flooded and suffered extensive damage. The landlord responded to the flood immediately and two restoration companies attended at the subject rental property from August 21 -31, 2019 to stop the flood and deal with the immediate aftermath. Large amounts of drywall in the subject rental property were removed following the flood.

Both parties agree to the following facts. The tenant resided at the subject rental property until the end of September 2019 when he moved into another building operated by the landlord.

The tenant testified the landlord owes him a pro-rated amount of rent from August 21-31, 2019 and all of September's rent due to his loss of quiet enjoyment of the subject rental property during that period of time. The tenant argued that the landlords should have known that the absence of safe flooring in the attic greatly increased the likelihood of the accident. The tenant testified that repairs to the subject rental property were not made in a timely fashion which required him to switch apartments.

The manager testified that it is not common practice or a requirement that she is aware of to have solid flooring in the attic and that the landlord could not have anticipated the accident. The manager testified that the landlord acted expediently in dealing with the flood by have two restorations companies attend the same day. The manager testified that the landlord contacted their insurer the same day of the flood to start the claiming process. The manager testified that the city refused to allow repair work on the subject rental property to begin until building permits were obtained which took 6 weeks. The manager testified that the landlord viewed the tenancy contract as being frustrated due to the flood but did not insist the tenant move out immediately because he had no-where to go. As soon as another unit in another building became available, the landlord offered it to the tenant. The tenant testified that he did not believe the tenancy was frustrated.

The manager testified that the scope of work to return the subject rental property to a livable state was intensive and that the landlord did not receive an occupancy permit for the subject rental property until May 8, 2019.

The landlord entered into evidence the following:

- a letter from their insurer dated August 21, 2019 confirming that the claim was initiated;
- a letter from an insurance investigator confirming the damage was caused by a third-party construction worker;
- a letter from the contractor repairing the subject rental property setting out the scope of the work required;
- an email from the insurance investigator informing the landlord of the building permit delay;
- an occupancy permit for the subject rental property dated May 8, 2019.

The landlord testified that it was the tenant's responsibility to carry his own insurance which would have provided him with accommodation during the renovation; however, the tenant did not carry any insurance. The tenant did not dispute the above testimony.

The tenant testified that the large fans brought in by the restorations companies to dry the subject rental property increased his electricity bills. No hydro bills were entered into evidence and the tenant did not list electricity expenses in his monetary worksheet entered into evidence. The tenant did not provide any information on the amount he believed he paid in extra hydro due to the fans.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
Section 67 of the *Act* states that without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement,

the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

Loss of Quiet Enjoyment and Landlord's Obligation to Repair and Maintain

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a)reasonable privacy;

(b)freedom from unreasonable disturbance;

(c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d)use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Policy Guideline 6 states 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 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 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.

Section 32 of the *Act* states that 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.

I find that the landlord did not cause the flood through a direction action or through negligence. It is clear from the evidence than a third-party contractor, completing unrelated work, broke the water line. I find that the tenant has not established that flooring in the attic is required by the City or any other building code. I find that the tenant's submission that the landlord should have known that a lack of flooring in the attic would likely cause a flood to be too remote a possibility to be accepted.

I find that the landlord took reasonable steps in addressing the initial flood and working with the city to obtain the necessary permits to complete the necessary repairs, in accordance with section 32 of the *Act*. I find that in providing the tenant with new accomodation as soon as it became available, the landlord sought to decrease the disturbance to the tenant as much as possible.

I note that the tenant did not carry his own insurance to provide him with alternative accomodation in the case of a flood. Therefore, the tenant failed to mitigate his damages.

I dismiss the tenant's application for monetary damages due to failure to mitigate his damages and failure to prove that the landlord breached the *Act, Regulation* or Tenancy Agreement.

I decline to make a finding on whether or not the tenancy agreement was frustrated as I have already dismissed the tenant's application and the finding is not relevant to my above decision.

Conclusion

The tenant's application was dismissed without leave to reapply.

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 08, 2020

Residential Tenancy Branch