



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 25, 2019, (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order for regular repairs; and
- an order granting a rent reduction.

The Tenant's advocate M.B. and the Tenant's witness A.J. attended the hearing for the Tenant. C.H. and B.M. attended the hearing as Agents for the Landlord. All in attendance provided affirmed testimony.

M.B. stated that the Tenant served his Application and documentary evidence package to the Landlord by registered mail on December 4, 20, 2019, and January 7, 2020. The Landlord's Agents confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

M.B. stated that the Tenant sent further documentary evidence to the Landlord by registered mail on January 8 and 15, 2020. The Landlord's Agents stated that they received the documentary evidence, however, it was received late.

Residential Tenancy Branch Rule of Procedure 3.14 states, in regard to evidence not submitted at the time of Application for Dispute Resolution by the Applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. Evidence served by

registered mail is deemed to have been received 5 days after it was sent. As such, I accept that the documentary evidence served by the Tenant on January 8 and 15, 2020 was not received by the Landlord prior to 14 days before the hearing. As such, I find that this evidence was served late and will not be considered.

The Landlord's Agents stated that they served a copy of their documentary evidence to the Tenant by registered mail on January 7, 2020. M.B. confirmed receipt. Pursuant to section 88 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order for the Landlord to make regular repairs to the rental unit, pursuant to Section 32 and 62 of the *Act*?
3. Is the Tenant entitled to an order granting a rent reduction, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on May 1, 2016. Currently, the Tenant is required to pay rent in the amount of \$828.00 which is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 which the Landlord continues to hold.

M.B. stated that the Tenant's claims relate to a flood that took place in the rental unit on or around September 19, 2019. M.B. stated that after the Tenant notified the Landlord about the flood, the Landlord has not taken sufficient action to remediate the damage caused to the rental unit as a result of the flood.

M.B. stated that on September 23, 2019 the Tenant employed the services of a remediation specialist who inspected the rental unit and made the following recommendations;

- Remove and reset baseboards where needed
- Remove and replace countertop
- Remove and replace lower base cabinets (Save and re-use kitchen sink)
- Remove and replace drywall along bottom 12-24 inches – approximately 20 lineal feet (behind cabinets, shared wall with closet, behind fridge)
- Remove and replace vinyl sheet flooring in kitchen, continuous throughout hallway to front door
- Clean and disinfect exterior of stove

M.B. stated that the Landlord was provided a copy of the report, however, the Landlord's have only replaced the kitchen countertop. M.B. stated that currently, the Tenant is concerned regarding the possibility bacteria and mold growth as a result of the Landlord not taking the appropriate steps to remediate the damage following the flood.

The Tenant's witness, A.J. was made available by the Tenant who stated that he was the remediation specialist who attended the rental unit on September 23, 2019. A.J. further confirmed the recommendations he made following his inspection. A.J. stated that by using his moisture meter, he was able to detect areas which contained high levels of moisture as a result of the flood. According to A.J. these areas included moisture in the walls, floor in the kitchen, and at the base of the cabinets.

M.B. stated that the Tenant is seeking an order directing the Landlord to repair and remediate the rental unit as recommended by the remediation specialist in such a way that maintains residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

M.B. stated that as a result of these findings the Tenant was not willing to remain in his rental unit until these issues were fixed. M.B. stated that the Tenant has been staying in a hotel, therefore, he is claiming the hotel costs in the amount of \$5,445.89. The Tenant provided a copy of the hotel receipts in support.

M.B. stated that the Tenant is also seeking a rent reduction in the amount of \$3,375.00 for the four and a half months that the Tenant has not been able to reside in the rental unit.

In response, the Landlord's Agents stated that on September 19, 2019 the Tenant notified them of a leak that had taken place a few days prior. The Landlord's Agents stated that they sent their maintenance person who attended the rental unit on September 19, 2019 to clear the drain. The Landlord's Agents stated that there was no way on knowing where the obstruction originated from which caused the leak, but suspect it was caused by the Tenant.

The Landlord's Agents stated that they received the report from the remediation specialist on September 23, 2019 and attended the rental unit on September 24, 2019 to further inspect the rental unit to order the necessary material to make the required repairs. The Landlord's Agents stated that aside from the kitchen counter, there was no other damage observed. The Landlord's Agents stated that on September 30, 2019 the new kitchen counter was installed along with new fixtures. Another inspection was conducted on September 30, 2019 and there was still no sign of any water damage to other areas.

The Landlord's Agents stated that on October 1, 2019 the Landlord received notification from the Tenant that he was staying in a hotel as he could not remain in the rental unit. The Landlord's Agents stated that this was a voluntary decision on the Tenant's part and that they did not see any reason as to why could not remain in the rental unit. Furthermore, the Landlord's Agents stated that the Tenant does not have insurance. The Landlord's Agents stated that they did not hear from the Tenant until they received the Tenant's Application for dispute resolution.

The Landlord's Agents stated that on December 10, 2019 they once again attended the rental unit and conducted a 45-minute inspection of the rental unit where they found no signs of water damage anywhere in the rental unit. The Landlord's Agents are under the impression that there are no further issues as a result of the flood and they feel as though they took the appropriate steps to replace the kitchen counter which appeared to have been the only portion of the rental unit that had been damaged.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 32 of the *Act*,

(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...

The Tenant has applied for an order for regular repairs in relation to a flood which took place in the rental unit on or around September 19, 2019. In this case, I accept documentary evidence and witness testimony regarding the inspection conducted by a licensed restoration company which outlined several recommendations based on their inspection of the rental unit on September 23, 2019. I accept that the Landlord repaired the kitchen counter and that they did not observe any further damage in the rental unit during follow up inspections since the flood. M.B. stated that the Tenant continues to have concerns regarding the possibility of mold growth and bacteria as a result of inadequate remediation, therefore has been unable to reside in the rental unit as a result.

In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the rental unit is uninhabitable as a result of the damage caused by the flood. I do however find that the Landlord has provided insufficient evidence to demonstrate that their maintenance worker is qualified to inspect the rental unit in such a way to ensure that there are no moisture issues remaining in the rental unit.

In light of the above, and in accordance with Section 65 of the *Act*, I order the Landlord to retain the services of a licensed restoration company to inspect, assess and where work is required to repair the rental unit to a state of decoration and repair that complies with the health, safety and housing standards required by law.

I order the Landlord to undertake these inspections and repairs as soon as possible, but no later than two weeks after receipt of this decision. Should the Landlord not comply with this order, the Tenant is at liberty to reapply for monetary compensation, including a reduction of monthly rent, under the *Act*.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming for monetary compensation in the amount of \$5,445.89 in relation to having to stay in a hotel since the flood. The Tenant is also claiming a rent reduction in the amount of \$3,375.00. In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the damage caused by the flood to the rental unit was so extensive, that he was unable to remain in the rental unit. I find that based on the Tenant's documentary evidence, that the recommendations made by the restoration specialist were cosmetic in nature and that there was insufficient evidence provided by the Tenant to support any damage that would prevent him from residing in the rental unit.

As such, I dismiss the Tenants claims for monetary compensation without leave to reapply.

Conclusion

I order the Landlord to retain the services of a licensed restoration company to inspect, assess and where work is required to repair the rental unit to a state of decoration and repair that complies with the health, safety and housing standards required by law. I order the Landlord to undertake these inspections and repairs as soon as possible, but no later than two weeks after receipt of this decision.

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: February 5, 2020

Residential Tenancy Branch