



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On September 23, 2019, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 22, 2019, the Tenants made an Amendment to their Application seeking to increase the amount of monetary compensation they were seeking pursuant to Section 67 of the *Act*.

Tenant V.J. attended the hearing for the Tenants, and G.L. and T.L. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

G.L. requested that as his company is the property management company that represents the Landlord, that the company name be removed as a Respondent from the Application. As the tenancy agreement clearly names who the Landlord is, I am satisfied that the property management company can be removed from the Application.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on September 25, 2019 and G.L. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

She advised that she served the Amendment to the Landlord by registered mail on October 22, 2019 and G.L. confirmed that the Landlord received this package. Based

on this undisputed testimony, I am satisfied that the Landlord was served with the Amendment.

She also advised that her evidence was served to the Landlord by registered mail on January 2, 2020 and G.L. confirmed that the Landlord received this evidence. In addition, the Tenant advised that she served the Landlord, in person, with a USB containing her digital evidence on January 16, 2020. G.L. confirmed that the Landlord had received this digital evidence and that he was prepared to respond to it. Based on the undisputed testimony, as the evidence served on January 2, 2020 complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision. In addition, as G.L. was prepared to respond to the Tenant's digital evidence, I have also accepted this evidence and will consider it when rendering a decision.

G.L. advised that the Landlord's evidence was served to the Tenant by registered mail on January 10, 2020 and the Tenant confirmed receiving this evidence. Based on the undisputed testimony, as this evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 16, 2019 and that rent was established in the amount of \$2,680.00 per month, due on the first day of each month. A security deposit of \$1,340.00 was also paid.

The Tenant advised that they were seeking compensation in the amount of **\$5,360.00** because the Landlord failed to provide a “livable condition” which caused her “2 months of physical and emotional pain.” She stated that there was a small leak in the rental unit that caused little damage on August 2, 2019, and when it was reported, the building manager confirmed that this leak happened in other rental units as well. The damage was assessed by the representative of the Landlord and contractors were sent in on August 7, 2019 but they could not stop the leak. As well, she stated that their priorities were focussed mainly on fixing this leak issue on the units that were owned instead of tenanted properties. She submitted that to completely fix the issues, the shower door required replacing, which was done on September 17, 2019. She stated that the reason it took so long for this repair is that it was up to her to coordinate with the contractors for when they could enter the rental unit. During the hearing, she was asked why she had difficulty allowing the contractors into the rental unit to conduct the repairs sooner, and she stated that she “had to be there while they were working.”

She stated that after the shower door was replaced, a contractor told her she could use the shower after two days. After two days, she used the shower; however, she observed that the water was not flowing out of the drain and when she opened the shower door, it caused a substantial flood of the rental unit. She reported this to the Landlord on September 19, 2020. She stated that the Landlord eventually had the repairs for this second flood completed by October 7, 2019. She advised that the rental unit was unlivable, that the carpet was mouldy, that she had to stand on a cold, uncarpeted floor, that she had to move her personal belongings into the living room, that her bed had to be disassembled, and that she had to live with fans blowing throughout the days. However, she acknowledged that she had a second bathroom in the rental unit where she was able to shower in the meantime. She referred to the videos and pictures she submitted as documentary evidence to support her position. She could not explain how the loss that she suffered was equivalent to the amount of compensation she was seeking; however, she stated that this scenario left her “drained emotionally and physically.”

G.L. advised that they acted immediately when informed of the first leak and this was dealt with as it was due to a construction problem that was covered under the homeowner warranty claim. He stated that the tiles were sealed to fix the leak on August 7, 2019. However, the leak started again and the tiles were replaced entirely on

September 5, 2019. He advised that the Tenant was to coordinate repairs with the contractors, but the repairs were delayed as the Tenant did not make it convenient for the contractors to fix the issue. He stated that the Tenant had access to the second shower in the rental unit.

He advised that the shower was fixed and available for the Tenant to use on September 19, 2019; however, a plug was left in the drain for a water test to be conducted. He confirmed that the glass shower door installer advised her that she could use the shower, but this was done in error as this person did not know about the plug for the water test. He stated that despite being told that she could use the shower, the Tenant was negligent for the second flood damage as water would have clearly been seen pooling in the shower and the Tenant should have stopped showering instead of allowing it to accumulate to the point that it flooded the rental unit when she opened the shower door. This was confirmed in an email dated September 24, 2019 from one of the contractors. Despite the Tenant being partially responsible for this second flood, the Landlord elected to conduct the repairs anyways. With respect to the fans required to dry the rental unit, the Tenant was advised that she could turn them off when she was at home and at night.

T.L. confirmed that there were two contracting crews hired to fix the shower leak. There was a glass contractor who was responsible for fixing the shower door and there was a plumber/tile contractor. He stated that the glass contractor mistakenly told the Tenant that she could use the shower on September 19, 2019 as he was unaware that the other contractor had left a plug in the shower drain to conduct a test.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenant's claims for compensation, the consistent and undisputed evidence is that the first flood was caused by a construction defect in the rental unit. As the Tenant was unable to use this shower for approximately five weeks, I am satisfied that the Tenant suffered some loss. However, the Tenant did have a second shower in the rental unit that she was able to use for the entire duration of this repair. Furthermore, the consistent evidence is that the repair took longer to complete as the Tenant would only schedule the repair to take place on a day when she could be present. It is not clear to me why she felt compelled to be present during repairs and there is no such requirement in the *Act* for this. Finally, with respect to the fans, there was no dispute that the Tenant was permitted to turn the fans off when she was home. I find that all of these factors detract from the legitimacy of the Tenant's overall claims for loss.

With respect to the second flood, the consistent evidence is that there was some miscommunication from the contractors, one of which mistakenly advised the Tenant that the shower could be utilized. However, as there was a plug in the shower drain, I find it logical that it would be quickly evident that the water would not have been draining and that the Tenant should turn off the water and stop showering. Given the undisputed evidence of the substantial damage caused to the rental unit, I can reasonably infer that the Tenant let a considerable amount of water build up and then released it into the rental unit. Consequently, while the Landlord bears some responsibility for the drain being plugged, the Tenant also bears some responsibility for allowing this much damage to occur. As such, I find that this detracts from the Tenant's claims for compensation as she was partially responsible for the extent of the damage.

As the Tenant could not adequately break down her claims for compensation and could not explain the actual loss that she suffered, other than making a vague claim for "physical and emotional pain" and being "drained emotionally and physically", I am not satisfied that the Tenant has established a claim in the amount that she is seeking. As I am satisfied that she suffered some loss from the first flood, and as I am satisfied that she is only partially to blame for the second flood, I find that the Tenant has suffered a reduced value in the tenancy due to these issues. Based on the totality of the evidence before me, I am satisfied that the Tenant has substantiated a loss in the amount of **\$150.00**.

As the Tenant was successful in this Application, I find that she is entitled to recover the \$100.00 filing fee paid for this Application. The Tenants are permitted to withhold the amount of **\$250.00** from a future month's rent to satisfy this debt.

Conclusion

As the Tenants were successful, the Tenants are permitted to withhold **\$250.00** from a future month's rent to satisfy this debt.

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 3, 2020

Residential Tenancy Branch