



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order reducing rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended and represented the other named tenant who is his son. The tenant who did not attend the hearing was the tenant, and the representative is the tenant's father, although both are named as tenants in the application.

An agent for the landlord company also attended the hearing. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, however, some of the landlord's evidence that has been uploaded to the Residential Tenancy Branch system are in a ".msg" format which I cannot view. All other evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more particularly a devaluation of the tenancy due to flooding?

Background and Evidence

The tenant testified that this fixed term tenancy agreement was made between his son who is the other named tenant, and the landlord. The tenancy began on December 1,

2018 and reverted to a month-to-month tenancy after November 30, 2019, which ultimately ended on June 30, 2020. Rent in the amount of \$1,695.00 per month was originally payable on the 1st day of each month, which was raised to \$1,737.37 effective December 1, 2019. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$847.50, which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex and copy of the tenancy agreement has been provided as evidence for this hearing.

On January 18, 2020 water damage occurred at the apartment complex and restoration didn't start until about the 24th of the month. The restoration company had to take down walls and ceilings and the tenant was required to move all of his furniture into the living room/dining room areas. His bed had to be taken apart and moved to the hallway and then put back together again. The tenant tried to stay in the rental unit, but couldn't breathe or sleep due to industrial fans blowing. The tenant stayed at his parent's home most of the time, but went back and forth. Photographs have also been provided for this hearing.

The rental unit was never cleaned and the restoration company said they were paid to do the repairs, not to clean, so the tenant's mother had to clean it. Repairs were finally completed on March 20, 2020. The landlord said that due to COVID-19 he could not get anyone to clean so the tenant would have to do it himself.

An assistant of the landlord said that if the tenant vacated immediately, he would not have to pay any further rent and would get back his security deposit. The landlord would not have been able to re-rent. No one from the landlord company has ever tried to attempt to solve the issue and the tenant was left on his own.

The tenant claims 2 months rent, or \$3,474.74 from the landlord.

The tenant provided a forwarding address in writing on June 30, 2020 but the landlord has not yet returned any portion of the security deposit.

The landlord's agent testified that the flooding happened on January 17, 2020 at night. The restoration company that attended gave the landlord a scope of work, dividing the affected areas into 3 tiers, tier 3 being the most severe. This particular unit fell into tier 1, being the least severe of the affected units. The work was completed on this unit on March 6, 2020.

The landlord's agent agrees that there were a lot of fans, and the insurance company deemed some of the units to be "frustrated," but not this unit. The restoration company

provided a "Scope of Work" document for the affected rental units, and a copy has been provided for this hearing. The work for this rental unit included removal and disposal of wet stained textured ceiling drywall and removing and disposing of wet ceiling insulation and vapour barrier in the master bedroom, and is dated January 23, 2020.

The landlord asked tenants to move their belongings out and repairs were expedited, but the landlord was not allowed after COVID-19 started to send in cleaners.

Tenants are to have personal insurance for incidents such as the flood that happened. The tenant was not neglected, the repairs were handled with priority; the landlords did what they could. The rental unit has not yet re-rented, but not because of damages; repairs are completed.

The security deposit was returned to the tenant in full, and the landlord received a forwarding address on the move-out condition inspection report. A copy of the report has been provided for this hearing which states that the tenant, or the tenant's agent, agrees to the landlord keeping the security deposit. It is dated June 30, 2020 at move-out.

Analysis

I have reviewed the photographs and all evidentiary material provided by the parties, with the exception of documents in a .msg format, and although the "Scope of Work" document shows that only the bedroom was affected, the photographs show that much more was affected, with the restoration company's covers on all of the floors and walls, and the requirement of the tenant to move his furniture, including taking the bed apart. There is no doubt that the tenancy was devalued by the flooding that occurred. The parties disagree as to when the repairs were completed, however the tenant has provided strings of emails and text messages between the tenant and the landlord's agent dated as late as March 17, 2020 which show that the landlord left it entirely up to the tenant to remove the restoration company's rugs, complete the cleaning, and took absolutely no responsibility for the tenant. The landlord's agent testified, and spoke to COVID-19 in his emails, but the landlord has not agreed that any compensation should be awarded.

Where a tenancy is devalued, the landlord must compensate for damages that the tenant suffered during the time that the tenancy was devalued. The tenant claims 2 month's rent, and given that the flooding occurred on January 18, 2020 and the landlord's agents didn't reply to the tenant's concerns about cleaning up after the restoration company had attended until March 17, 2020, I find that the period in question is 2 months. The work was supposed to start on February 14, 2020, but didn't.

The tenant's representative testified that the tenant stayed at his parents' home, going back and forth, but couldn't sleep in the rental unit due to the loud fans, which was not disputed by the landlord's agent.

In the circumstances, I am satisfied that the tenant was unable to enjoy the rental unit for a period of 2 months, and I order the landlord compensate the tenant the sum of \$3,474.74.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenant as against the landlord in the amount of \$3,574.74.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,574.74.

This order is final and binding and may be enforced.

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: August 17, 2020

Residential Tenancy Branch