



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Locke Property Mgmt. Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RR, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to sections 65 and 72 of the *Residential Tenancy Act*. The tenant applied for compensation for the loss of use of the rental unit due to problems associated with sewage entering the crawl space of the unit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties were represented by their agents.

As both parties were in attendance, I confirmed service of documents. The landlord confirmed receipt of the tenant's hearing package just prior to the hearing and stated that he did not have the enough time to respond. The tenant agreed that the package was mailed late to the landlord due to unavoidable circumstances. I offered the landlord the option of adjourning the hearing and he declined. The landlord stated that he wished to continue with the hearing.

I find that the landlord was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing, the tenant's agent confirmed that the tenant was seeking compensation and not a rent reduction.

Issues to be decided

Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on January 18, 2020. The rental unit is a coach house. The monthly rent is \$1,050.00 due on the first of each month.

The tenant stated that in the middle of February, an odour of sewage permeated the rental unit and he informed the landlord of the problem. The landlord stated that he acted immediately on the complaint and sent in a maintenance crew to assess the problem. It was determined that the vents needed cleaning and proper installation. The maintenance crew rectified the problem by power washing the vents and correcting the improper installation of the vents. The tenant agreed that the odour went away but came back in a few days.

The landlord continued to investigate the cause of the odour and found that raw sewage was entering the crawl space. The landlord cut a hole in the kitchen floor to gain access to the crawl space and had the sewage pumped out. The parties agreed that the trouble shooting to determine the cause of the odour and then fixing the problem took about 7 weeks and was finally resolved in the first week of April 2020.

The tenant stated that it was impossible to live in the unit and he was unable to use the kitchen. He stated that his clothes smelled of sewage and he spent nights at his aunt's home. The tenant finally moved back in to stay on April 05, 2020.

The landlord stated that the tenant had the use of the garage the whole time the problem was ongoing. The landlord offered half a month's rent as compensation which the tenant declined. The tenant is claiming compensation in the amount of 2,100.00 which is rent for two months.

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find that the rental unit was uninhabitable and a health hazard due to the presence of raw sewage that was seeping into the crawl space and the emanating odour. I further find that the landlord took immediate action to have the problem assessed and ultimately resolved it.

In order to prove an action for a breach of the covenant of quiet enjoyment and an entitlement to compensation, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises.

In this case, I find that the landlord carried out his responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards. However, in order to carry out this duty, the landlord inconvenienced the tenant while the cause of the problem was being determined and then fixed.

Residential Tenancy Policy Guideline# 22 states that where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award compensation. In this case I find that a breach of contract occurred resulting in inconvenience to the tenant, a threat to his health and a reduction of the value of the tenancy. Therefore, I find that the tenant is entitled to compensation for the days that the rental unit was filled with the odour of raw sewage.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However, a tenant may be entitled to reimbursement for loss of use of a facility even if the landlord made every effort to minimize disruption to the tenant.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that he was inconvenienced by odour in the unit, by having his clothes smell of sewage, by not having the use of the kitchen and by having to spend the nights outside of the rental unit. Therefore, I find that the tenant is entitled to nominal damages.

Since the problem started in Mid February, 2020 and was resolved on April 05, 2020, I find it appropriate to award the tenant the return of rent for this period in the prorated amount of amount of \$1,840.00.

Since the tenant has proven his claim, I award the tenant the recovery of the filing fee of \$100.00.

Overall, the tenant has established a claim of \$1,940.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$1,940.00**

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 29, 2020

Residential Tenancy Branch