



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, OLC

Introduction

The tenant applies to recover expenditures related to repairs, considered by her to be emergency repairs, resulting from a series of three floods in the basement of the rental unit. She also seeks a compliance order directing the landlord to authorize the strata corporation to release a copy of its bylaws and other, unspecified information to the tenant.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the landlord liable for the tenant's loss resulting from flooding? If so, what is a proper measure of damages? Can or should the landlord be compelled to direct the strata corporation to provide a copy of its bylaws or other information?

Background and Evidence

The rental unit is a three-bedroom townhouse. It is one of four or five in a grouping of "cells" composed of over 200 condominium units of a strata corporation.

The tenancy started March 1, 2018. There is a written tenancy agreement and it includes the standard "Form K" addendum required by the *Strata Property Act* and in which a tenant agrees to be bound by the bylaws of the strata corporation.

The monthly rent is \$825.00, due on the first of each month. The landlord does not hold a security deposit nor a pet damage deposit.

In the late afternoon of May 14, 2019, the floor drain in the basement of the rental unit began “spewing” water according to the tenant. It is a drain to the sewer lines buried under the complex and so the water coming into the tenant’s basement was sewer water. The landlord was away and so the tenant called the office of the strata corporation’s management company. She was directed to call a plumber however a “roto rooter” worker appeared, apparently called by the management company. He informed the tenant that other places were flooding as well.

The tenant began bailing out her basement with a shop vacuum, carrying its water-filled reservoir up from the basement to be dumped on the lawn and then back down again. Her brother came with a sump pump and helped out.

Later in the day the roto rooter man informed her he had found the cause of the sewer line blockage. It was a “large white thing” caught in the sewer pipe at a location underneath a playground on the strata property.

Later that night the water began to drain again. The tenant continued to mop up. As well, she had a considerable number of belongings in the basement that needed to be moved off the floor. Some suffered water damage.

The strata corporation’s management people arranged for a company to come out a few days later and sanitized her basement area.

In summary, the events of May 14 were not a pleasant experience for this tenant.

Forty-four days later, on June 28, 2019, the basement flooded again. It was a Friday morning and the tenant was home. She went down the stairs to do some laundry and discovered water up to the bottom step of the basement stairs. A person at the management company later told her other units had flooded and that the sewer was again blocked but this time at a different location under the strata property. The tenant knows that the units on either side of her also flooded that day.

This time the tenant’s brother was not available. She testifies that she paid a handyman acquaintance \$500.00 to help her get the water out of her basement. The water started to drain again later in the day. Unfortunately, the water had caused the gas hot water heater to fail. It was the start of the long weekend and the landlord could not get someone to attend to it for a reasonable cost before Tuesday. On July 5 and again July 9 a company hired by the management company came and sanitized the basement.

On or about July 30, 2019 the tenant sent a bill to the landlord for what she considered to be her loss from the two floods. There was no resolution of the matter and so, on May 14, 2020, the tenant made this application to the Residential Tenancy Branch and served the landlord.

Fifteen days later, on May 29, 2020, the tenant's basement flooded for a third time. The tenant testifies that this time it only flooded to about 3 inches in depth. The tenant called the landlord and called and texted the strata management company. The person at the management company indicated the roto rooter person would be there that day the sanitization people would be there the next week. According to the tenant the sanitization workers could have been there earlier but the strata management company did not want to pay overtime for the work. On May 25 the strata people arranged for someone to come and take the sewer water out of the basement. The tenant learned that a number of other units had flooded. Even units in different cells on the strata property had flooded. The tenant describes her difficulties with the person who arrived to "extract" the sewer water, indicating that the worker would not move articles on the floor and would only "sanitize" areas that were visible to him. Finally, after checking with his boss, the worker moved some but not all of the articles in basement and dried and cleaned the floor under them. He draped the tenant's rug, soaked in sewer water, over the tenant's hide-a-bed. This was the only restoration work the strata management company performed in the tenant's basement.

At this hearing the landlord and tenant agreed that from what they'd been told later, all three sewer blockages were likely created by act of flushing diapers down a toilet somewhere on the strata property.

The landlord testifies that she is not responsible for this loss.

The tenant indicated that the landlord has been helpful during all the floods and in the tenant's attempt to find legal relief.

Analysis

Causation

It is apparent that the landlord did nothing to cause the blockages. The primary culprit (or culprits) was the miscreant flushing diapers down a toilet located elsewhere on the strata property. It might be argued that the blockages were the result of a failure to properly maintain or monitor the state of the sewer lines underneath this large strata

property. However, the landlord has no obligation, right, duty or power to control that maintenance, other than, perhaps, a right to vote out a strata council which fails to properly manage such things.

But for any statutory duty that might exist, at common law this landlord had nothing to do with cause of the flooding of the tenant's basement on any of the three occasions and she is not responsible for the consequences that ensued for this tenant.

Statutory Responsibility

Section 33 of the *RTA*, regarding "emergency repairs," provides, among other things:

- (1) In this section, "emergency repairs" means repairs that are
 - (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) **damaged or blocked water or sewer pipes** or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

. . .

- (4) A landlord may take over completion of an emergency repair at any time.

(emphasis added)

I find that s. 33 refers to the obligation of a landlord to effect repairs of failed sewer pipes but only those the repair of which she could take over from her tenant. In this case neither the tenant nor the landlord had the authority to unblock a sewer pipe located on strata property some distance from the rental unit. The *RTA* does not impose and obligation or higher duty on the landlord in this regard, than the common law.

Compliance Order

Regarding the tenant's request for a compliance order to obtain the strata bylaws, at the start of the tenancy the landlord required the tenant to sign a "Form K" under the *Strata Property Act*, SBC 1998, c. 43, that form obliges the tenant to comply with the bylaws of the strata council. As well, s. 146(1) of the *Strata Property Act* requires a landlord to provide her tenant with a copy of the current bylaws at the start of the tenancy. If the landlord failed to do so I hereby direct that the landlord do so forthwith.

The tenant also seeks information regarding the floods from the strata council but apparently needs the landlord's consent. I find the landlord is not required to give that information nor her consent to its release to the tenant, though I can't think of a reason the landlord would not give her consent. I refer the parties to s. 147 of the *Strata Property Act* in the hope it might be of some assistance.

Conclusion

I find the tenant's application for monetary relief from the landlord must be dismissed. She is free to apply against the proper respondent in the proper forum. At hearing the tenant was referred to the Provincial Court and the Civil Resolution Tribunal.

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 18, 2020

Residential Tenancy Branch