



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMI Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the landlords confirmed that they had received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on January 21 2021, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence for this hearing was served in accordance with section 88 of the *Act*.

At the commencement of this hearing, the parties agreed to correct the spelling of the corporate landlord's name, which had been misspelled in the tenants' application. The parties confirmed that the spelling of that name is as it appears above, which I have amended accordingly.

The tenants also advised that they remain tenants in this rental unit. As such, they agreed that their inclusion of a request to obtain a return of their security deposit was

made in error. They withdrew that portion of their application, decreasing the amount of their requested monetary award from \$6,825.00 to \$5,680.00.

Issues(s) to be Decided

Are the tenants entitled to a retroactive rent reduction to compensate them for the loss in the value of their tenancy? Are the tenants entitled to other losses they have incurred with respect to this tenancy? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy for a two level, four bedroom home began as a one-year fixed term tenancy that was to run from April 15, 2019 until April 30, 2020. Tenant ST (the tenant) gave undisputed sworn testimony that the lower level of this dwelling is approximately two feet below the grade level of the surrounding property. They noted that there are three bedrooms on the upper level, with one bedroom in the lower level. There are kitchens and bathrooms on both levels. The tenant maintained that with the exception of the garage that the two levels provide essentially similarly sized living space.

According to the terms of their Residential Tenancy Agreement (the Agreement), the tenants pay monthly rent of \$2,290.00 to the landlord by the first of each month. The landlords continue to hold the \$1,145.00 security deposit for this tenancy.

The tenants outlined the following breakdown of their original application for a monetary award of \$6,825.00 as follows in the Monetary Order Worksheet they entered into written evidence for this hearing:

Item	Amount
Rent Reduction January 2020	\$1,145.00
Rent Reduction February 2020	1,145.00
Rent Reduction March 2020	1,145.00
Rent Reduction April 2020	1,145.00
Return of Security Deposit	1,145.00
Recovery of Tenants' Insurance Deductible	1,000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	\$6,825.00

As noted above, the tenants withdrew their application for the return of their security deposit as they are still living in the rental unit.

The tenants provided undisputed written evidence and sworn testimony that the lower level of their rental home suffered flooding damage on four separate occasions on January 7, 2020, January 14, 2020, January 23, 2020 and January 31, 2020. The most serious of these floods led to two to four inches of water covering the floors in the lower level of this dwelling on January 31, 2020. They became particularly alarmed when they learned from the tradespeople retained by the landlord that this was grey water and that they should not be using any portion of the lower level of this home for fear of contamination until repairs were completed and the source of the problems addressed.

The tenant gave undisputed sworn testimony that before the major flood occurred, they met with Landlord Representative MC (Landlord MC) of the corporate landlord's company and pulled the lid off of the sump. The tenant gave undisputed sworn testimony that they noted that the sump was full of water and that they recommended to Landlord MC that Landlord MC arrange to have the sump pumped out so as to minimize the potential for damage. The tenant maintained that there had been water pooling across the back lawn for some time. They described the backyard as saturated with water, which is "brown, foamy and oilish" looking. They said that later it was discovered by the landlord's tradespeople that there was a crack in the foundation, drainage tiles were needed, and that the sump was not operating correctly as it had not been kept free of roots. The tenants maintained that they lost the use of half of the home they had rented because of the landlords' failure to properly maintain the property and keep the sump operating effectively. They said that the report issued by the plumbing company showed that the sump needed to be inspected every eighteen months to two years.

The tenants gave undisputed sworn testimony and written evidence that they had to evacuate the lower level of their rental home where the tenant's 85 year-old mother had been staying. This required their mother to sleep in the dining room for some time. The tenant also noted that they have an immuno-compromised son whose health they were also concerned about when repairs and restoration work had to be undertaken. Tenant KH also noted that the flood interrupted the operation of a business they were running from the lower level of this home.

In response to a question from Landlord MC, the tenant stated that they spoke with MC prior to January 7, 2020 about the water that was developing in their backyard.

Tenant KH conceded that the tenants were responsible for some “unclear communication” about the flooding problems after they received the landlord’s Notice to End Tenancy on January 9, 2020. They said that this Notice put their status in limbo as they did not know whether they would be remaining in the rental home and were uncertain as to their rights in the interim. They said that they took a little time in reporting problems with the flooding to landlord, but that after the end of January 2020, they put everything in writing to the landlord(s). They alleged that had proper maintenance of the sump and drainage system been undertaken by the landlord that the roots would not have been allowed to grow into the pipes and the floods would have been avoided. They also asserted that the reason that the landlord’s own claim through their insurance company failed was because the insurance company believed that the landlord had not properly maintained the drainage system and sump.

Tenant KH stated that they were also concerned about the extent to which the repairs subsequently undertaken by the owner of the house, Landlord LCT (the landlord), truly rectified the problems. They said that they were not provided with copies of inspection reports or records from those who came to inspect the premises following the floods.

Landlord MC asserted that their awareness of a problem with flooding started on January 7, 2020, when the tenants called Landlord MC’s After Hours Service with concerns that flooding was entering the lower level of their house. Landlord MC gave undisputed sworn testimony supported by written evidence that a restoration service was immediately contacted by the After Hours Service, within a couple of hours of it being reported to them. The landlord noted that they had incurred a bill of \$3,900.00 for the repair and restoration of this initial flooding problem on January 7, 2020.

On January 9, 2020, two days after reporting the flooding problem, Landlord MC testified that they issued a Notice to End Tenancy to the tenants as they were again late in paying their monthly rent. Landlord MC gave undisputed sworn testimony that they did not hear anything from the tenants again until January 17, when they paid their outstanding rent and the landlords accepted this payment.

Landlord MC said that they had direct communication with the tenants on January 21, 2020, making arrangements at that time to view the premises with the landlord’s contractor on January 27, 2020. Landlord MC testified they were somewhat surprised when they arrived at the premises on January 27 and realized that “a small lake” had developed behind the house. Landlord MC gave undisputed sworn testimony that they asked the tenant(s) at that time why they had never reported the development of this lake to Landlord MC before. Although the landlords made arrangements to undertake

the repairs identified as necessary by the attending contractor, Landlord MC observed that the situation had changed when a major rainfall damaging lots of other properties in that community occurred within the following week, before the work could be commenced. This led to Landlord MC calling the initial restoration company back to the property. They packed up the tenants' belongings that had been in the lower level of this home and stored them in a dry storage facility offsite.

The landlord said they understood that the leakage problems had been resolved by January 9, 2020, when they heard no further concerns from the tenants until January 17, 2020. The landlord said that when they did realize that the situation had not been fully resolved, they retained the same company that had done the original repair work in early January, to return and make recommendations on how to fix the problem. The landlord said that upon their recommendation, they contacted a plumbing company to address this problem. They said that this plumbing company completed the work by the end of February 2020. They referred to almost \$20,000.00 in expenses that they incurred, documents that the landlord entered into written evidence for this hearing. While the plumbing and drainage receipt referenced work performed on February 19, 2020, the document provided with respect to the repairs to the lower level was a March 4, 2020 estimate of \$17,755.00 provided by a renovation contractor.

The landlord maintained that they would only have become responsible for compensating the tenants for their loss in the value of their tenancy if the landlord were negligent in their duties as landlords. The landlord maintained that this was not the case as they took swift action to address the problems each time these problems were brought to the landlord's attention by the tenants. The landlord noted that their attempt to have their expenses covered through their insurance company had been denied and that they had become responsible for the extensive repairs and renovations that were necessary. They said that they could not be held responsible for damage caused by the weather.

In their written evidence, the landlords maintained that at one point in March 2020, the contractor initially hired by the landlord to undertake the restoration work refused to continue working on this project because of the tenant's frequent complaints about the work the contractor was performing. It would appear that this dispute was resolved within a few days when the tenant agreed to co-operate and allow the contractor to complete these repairs.

The landlord said that they are intending to maintain the sump in accordance with the recommendation provided by the plumbing company that repaired the sump in February

2020. They said that they do not need to undertake this inspection until 18-24 months after February 2020. The landlord also confirmed that Landlord MC had gone out to check on the property about three months before this hearing.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that they experienced losses and a loss in the value of their tenancy as a result of the landlords' failure to abide by provisions of the *At* or their Agreement.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Section 32 of the *Act* establishes the following obligations on a landlord:

32 (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.

In considering this matter, I have also reviewed the contents of the letter written to the landlord by the landlord's insurance company. In that letter, the insurance company denied the landlord's initial claim for reimbursement following the initial flood of January 7, 2020. This letter advised the landlord that this damage was not a covered peril that fell within the scope of the landlord's policy. I see no evidence in this letter to support the tenant's assertion that the insurance company denied the landlord's claim because

the landlord had not properly maintained the sump or drainage system that had given rise to the flooding.

Based on a balance of probabilities, I find that the tenants have met their burden of proof in establishing that the landlords have not fully met their duty pursuant to section 32 of the *Act* to maintain the property in accordance with their obligations to do so. In accordance with section 65 of the *Act*, I find that the tenants are entitled to a monetary award for a retroactive reduction in the rent they have paid to the landlord(s).

In general terms, I accept the tenants' assertion that had the landlords been undertaking a regular process of inspecting the sump and associated drainage system, the floods could have been avoided. Given the recommendation that the plumbing and drain specialist provided to the landlord following their work, a regular cycle of inspection every few years would seem in order. The landlords did not provide any evidence with respect to any previous maintenance program for the sump or drainage system on this property. I find that the tenants were not responsible for the floods and did in fact lose some of the value of their tenancy as a result of the deficiencies in the landlords' maintenance of the sump, an important feature of this tenancy.

While I accept that the landlords are somewhat responsible for the loss in the value of this tenancy agreement during some of the four months claimed by the tenants, I have also taken into account the written evidence and sworn testimony provided as to the extent and the duration of this loss.

The tenants have claimed that they lost half of the value of their tenancy for the four months in question because the lower level of this home is essentially the same size as the level above it. While this may or may not be the case, given their observation that the lower level also includes their garage, the tenant testified that only one of their four bedrooms is on the lower level of this home. Even though there are other rooms in the lower level, including an area that the tenants were apparently using for a business that the landlord claimed that they were not authorized to run from there, the only person staying in that area of the house in January 2020 appears to have been the tenant's elderly mother. In considering their claim for a rent reduction of one-half of their monthly rent for these four months, I also take into account the tenant's testimony that the lower level is approximately two feet below grade level. While not a basement area per se, there would normally be less value to areas of a dwelling that are partially sub-surface than those that are at ground level.

Although I recognize that there was some disruption to the tenants, requiring the tenant's mother to sleep in the dining room while the repairs were undertaken, I do not find the tenant's estimate of half of the value of their tenancy agreement a reasonable estimate of their actual loss. With the exception of the tenant's mother and some relocation of activities that would otherwise have been located in the lower level of the home, I find little evidence that the flooding affected the rest of the tenants' household to the extent that they have claimed. Rather than a retroactive rent reduction of one-half, I find it more appropriate to limit the requested rent reduction to one-quarter. While an admitted inexact calculation, this aligns with the tenant's evidence that they have four bedrooms in the house, one-quarter of which are located in the lower level of this home.

I now turn to the tenants' claim for reduced rent for the four months from January to April 2020. I find that the evidence does not support the tenants' claim for all of the four months identified in their claim.

The tenants' claim for January is somewhat tainted by a number of factors. First, the initial flooding incident did not even occur until January 7, 2020, when almost one-quarter of that month had already passed. There is also no dispute that Landlord MC's company acted quickly following the call to the After Hours Centre and retained a restoration company that promptly addressed this immediate problem. After incurring this expense and hearing nothing from the tenants until January 17, it seems reasonable that the landlords operated from an understanding that the problem had been addressed. While in hindsight it may not have been prudent for the landlords to have made the assumption that this short term repair was sufficient, Tenant KH admitted that they had been remiss in not communicating their concerns to the landlords following their receipt of the January 9, 2020 Notice to End Tenancy from Landlord MC. When the tenants finally did contact Landlord MC to request a more permanent resolution to the flooding problem, the parties met with the restoration contractor on January 27, 2020. By that time, the landlords clearly knew that major repair work would need to be undertaken to prevent a recurrence of the flooding problems. Unfortunately, the additional downpour of January 31, 2020 greatly exacerbated the flooding problem, requiring immediate action to abandon the tenants' use of the lower level of the house. I would also be remiss if I did not take into account Landlord MC's undisputed observation that the tenants had failed to inform them that a small lake had formed in the tenants' backyard. For all of these reasons, I find on a balance of probabilities that the tenants have not established to the extent required their eligibility for a rent reduction for January 2020, the first month of the flooding problems they experienced. I dismiss this portion of their claim without leave to reapply.

Although I can understand that it might take some time to source out and retain a plumbing and drainage contractor able to undertake the necessary repairs, I find that by February 2020, the landlords were fully aware that there was a problem that needed to be addressed. By the beginning of that month, there is evidence that the tenants were in written communication with Landlord MC and were not relying solely on informal conversations. I find that the tenants have established that they experienced a loss in the value of their tenancy for the month of February 2020 and they were not responsible for this loss in value. The estimate for the restoration work was not even provided until early in March 2020. For these reasons and in accordance with paragraph 65(1)(f) of the *Act*, I allow the tenants a retroactive rent reduction in the amount of \$572.50 ($\$2,290.00 \times 25\% = \572.50) for the month of February 2020.

Despite evidence that there were some delays in early March 2020 resulting from the tenant's interaction with the landlord's contractor, I find that for most of this month, the tenants continued to experience a loss in the value of their tenancy. Work was ongoing and they still were unable to use the lower level of the rental home. In accordance with paragraph 65(1)(f) of the *Act*, I find on a balance of probabilities that the tenants have established their entitlement to a monetary award of \$572.50 ($\$2,290.00 \times 25\% = \572.50) for the month of March 2020.

In considering the tenants' additional request for a retroactive rent reduction for the month of April 2020, I note that the tenants' original request for compensation submitted to Landlord MC on February 27, 2020 identified only requests for a rent reduction for the months of January, February and March of that year. The only references the tenants made to their request for recovery of rent they paid for April 2020 appear to be in their Monetary Order Worksheet and their inclusion of the request for April 2020 in their application. I heard no sworn testimony from the parties that pertained to the tenants' claim for a monetary award for April 2020. As the party making the claim for a monetary award bears responsibility for demonstrating their entitlement to that monetary award, I find that the tenants have not established to the extent required their entitlement to a retroactive reduction in monthly rent they paid for the month of April 2020. I dismiss this portion of their claim without leave to reapply.

Although the tenants have supplied evidence that they incurred the first \$1,000.00 of losses for their tenants' insurance policy, I do not find that they have established their entitlement to recovery of this loss. A deductible is a standard feature of a tenant's insurance policy and one that they chose to incur in the event that they needed to collect on their policy. The tenants have failed to provide any written evidence or sworn testimony as to the losses they were not able to have covered through their tenant's

insurance policy, for which they are seeking reimbursement from the landlords. Under these circumstances, I dismiss the tenants' claim for the recovery of the deductible on their tenant's insurance policy without leave to reapply as they have failed to provide adequate evidence to document any losses in this regard.

I have also considered concerns raised by the tenants as to the extent to which the landlord plans to abide by the recommendation provided by the plumbing/drainage specialist that there be regular inspections of the sump and drainage system so as to avoid a recurrence of this sequence of events. Although it is not yet time for the first of these inspections to occur, I issue the following order:

For the duration of this tenancy, I order the landlord to retain a qualified plumbing/drainage specialist to inspect the sump and drainage system every 18-24 months as was recommended by the plumbing/drainage specialist in February 2020.

Since the tenants were partially successful in their application, I allow them to recover their \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which enables them to recover some of the rent they paid in February and March 2020, and to recover their filing fee:

Item	Amount
Rent Reduction February 2020 (\$2,290.00 x 25% = \$572.50)	572.50
Rent Reduction March 2020 (\$2,290.00 x 25% = \$572.50)	572.50
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,245.00

The tenants are provided with these Orders in the above terms and the landlord (s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

Since this is an ongoing tenancy, the tenants may also choose to enforce this order by withholding \$1,245.00 from one future monthly rent payment. **In the event that they**

choose this option of enforcing this judgement, the attached monetary Order is of no continuing force or effect.

The remainder of the tenants' monetary claim is dismissed without leave to reapply, with the exception of their claim for a return of their security deposit, which is withdrawn.

For the duration of this tenancy, I order the landlord to retain a qualified plumbing/drainage specialist to inspect the sump and drainage system every 18-24 months as was recommended by the plumbing/drainage specialist in February 2020.

This final and binding 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: March 23, 2021

Residential Tenancy Branch