Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metrowest Building Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

MNDCT, FFT

Dispute Codes

Introduction

The tenants (hereinafter the "tenant") filed an Application for Dispute Resolution (the "Application") on December 18, 2020 for compensation for monetary loss or other money owed. Additionally, they want reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 29, 2021.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Both parties attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, and the tenant's prepared evidence. Reciprocally, the tenant confirmed they received the landlord's prepared documentation in advance of the hearing. On this basis, the hearing proceeded.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for other money owed pursuant to s. 67 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

Both the landlord and the tenants submitted a copy of the tenancy agreement. Both parties signed the agreement on February 23, 2017, for the tenancy that started on March 16, 2017. The monthly rent was $1,400 payable on the first of each month; by the end of the tenancy in 2020, the tenants paid $1,435 each month. The agreement shows that the tenants paid a security deposit amount of $700 at the start of the tenancy.

The parties agreed that the tenancy ended on December 2, 2020. This was from the tenants advising the landlord that the tenancy was ending. The tenants advised the landlord they could not continue the tenancy because of flooding events the month prior. The landlord agreed to release the tenant from the tenancy agreement, and when the tenants moved out on December 2, 2020, they returned all keys to the landlord.

The end of tenancy arose because of flooding incidents, and this flooding is the reason for the tenants' monetary claim here. In the hearing the tenants described the events; this is also set out in their written statement dated December 9, 2020:

- November 13: water on patio beside the house did not drain – the tenant informed the property manager who sent a plumber and the plumber could not assist
- November 18: water from outside the basement suite was coming in and the tenant could not enter – the property manager called the plumber who removed water for two hours in the evening – this led to damage of items in the unit. The property manager advised the tenant to stay in a hotel, but at the risk of further flooding, the tenant remained in the unit and pumped more water out as needed
- November 19: the property manager arrived with a restoration firm to place 16 fans in the unit – the tenant stayed in a hotel
- November 20: the tenant returned to the unit and noticed "most of their essential belongings such as clothes, bedding, electric appliances, furniture, documents and shoes [were] wet." The tenant here describes the flood as being "not that bad (few inches)"; however, the drying equipment sent water and sewage throughout the unit, damaging most of their belongings
- Nov 21: after cursory investigation the evening prior, the city accepted responsibility for the flooding, and advised the property manager, who in turn advised the tenant of this

The tenant received a letter from the landlord on December 2, 2020. This letter sets out the following:

- an acknowledgement that “air movers installed to dry wet areas were running in the water and splashed water up on the ceilings, walls and your personal belongings”
- the city found that the flooding was caused by “the main pipe blockage at the back lane” for which they were responsible
- this resulted in loss to the landlord and the tenant, so the landlord will “claim the loss resulting from the said incident” – this will be an investigation by the city to assess the loss
- the landlord advised that any tenant claim must be addressed to the city by January 27, 2021

Upon the incident of flooding, the landlord advised the tenant to stay in a hotel and the tenant did so from November 19 to December 2. In their submission, they paid rent for November, so they do not understand why the landlord does not cover expenses for the tenant. The tenant submitted a copy of a text message from them to the landlord (Nov 22) in which they stated: ‘

> You mentioned that insurance of your company/landlord will pay for the hotel that we are currently staying because of the flood. I am wondering how long your company/landlord will cover it as we are having a hard time to find a new unit that is similar to our current conditions (rent, locations)

The tenant submitted a copy of a text message from the landlord (Nov 22) that was the landlord’s:

> Sorry. . . for the misunderstanding in this regard. The insurer will not pay hotel expenses, but the owner will do. [The owner] cannot pay for too long. City found the cause of the incident and advised that they will do proper repairs Monday and Tuesdays. We hope that by next Wednesday or so, the suite can be ready for you to live.. Or you would like to move out,.

The tenant communicated to the landlord that they made their own claim to the city for the damage to their items. They included the December 8 response from the city that states: “. . .you have indicated that your property may have been damaged as relates to the placement of drying equipment by your landlord or their contractor. The City would have no responsibility for any damage that is a direct result of their activity.”

The tenant maintains the damage was caused by the drying equipment. After their Application for this hearing, the tenant received a message from the landlord on January 7, 2021 that states “We did include your loss with the owner’s claim to City Hall.” Because the city confirmed the tenant had opened their own file, the landlord stated to the tenant directly: “it would be better for you to continue communicating with City Hall directly. That is to say, from now on, we will not include your loss in the Owner’s claim.”

On January 13, the tenant responded to the landlord’s message to clarify that they did submit their own separate claim to the city on December 4. Reiterating the city’s assertion that they would not allow reimbursement for landlord’s own activity, the tenant informed the landlord that docs related to this were submitted for this hearing.

The landlord provided a written response for this hearing. Their submission is that the event was caused by the city. The landlord throughout responded in a prompt fashion. Further: “The landlord had no liability to cover the tenant’s personal belongings. The tenant should have had their own insurance for such a purpose.” The landlord submitted a copy of their letter to the city dated December 28, 2020 wherein they describe the incident from their perspective. They also describe the air movers “were running in the water and splashed water up on the ceilings, walls and [the tenant’s] personal belongings.” This letter sets out their own claim to the city in the amount of $51,600 for “serious damages to the properties, equipment and the tenants’ personal belongings. . .”

In the hearing, the landlord reiterated that they did include the tenant’s claimed amount for damage to belongings. This was the result of their conversation with a city officer, who told the landlord they could either include the tenant’s claim as part of their own, or not. To this, the tenant reiterated that they had filed their own claim with the city.

The tenant’s claim here against the landlord is as follows:

Item(s)	$ Amount Claimed
computer	1,114.21
scale	130.00
furniture & other	1,440.00
bedding linen	550.00
shoulder bag	187.50
Subtotal	$ 3,421.71

hotel 12 nights		2,002.85
laundry		18.00
utilities Nov 18 – 30 hydro; wifi/internet		107.61
moving – damaged furniture removal		350.00
	Subtotal	$ 2,748.46
Total		$ 5,900.17

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The addendum to the tenancy agreement is clear that the tenant must carry their own content and liability insurance. It specifies the tenant agrees that insurance is for coverage of "fire, smoke, and water damage. . on their own possessions and for any damages and injury caused to or by third parties." I find this is clear evidence the landlord made the tenant aware of the need for renter's insurance.

The tenant neither presented that they had proper insurance in place; nor did they present that they were not aware or otherwise impeded from obtaining that insurance by the landlord. The addendum bears the tenant's agreement by their signature – this appears immediately below the clause that specifies the tenant is to carry insurance for these purposes.

With review of the four criteria above, and in the alternative, I find the tenant has not clearly demonstrated the cost of their personal damaged items; moreover, there is no breach of the *Act* or tenancy agreement by the landlord concerning those items. The photos provided do not establish sufficient evidence of damage to items the tenant

listed. As a result, the landlord shall bear no cost for these damaged items. I therefore dismiss this portion of the tenant's claim, with no monetary award.

On the hotel, the landlord stated they would pay that cost. This was on November 22, when they were not sure of the extent of damage due to flooding, or the length of time needed for remediation. I have established the tenant did not have required insurance; however, they were not cut short by the landlord because of this. Rather, the landlord advised that they or their own insurer would cover that hotel cost. It is not known what communication the landlord had with their own insurer on this point, but I find the landlord accepted the city was responsible and then concluded there was no mention of the need for their own property insurance.

The records show remediation made their final adjustments in the unit on December 2. This is when the tenant was free to move back into the unit. I find the tenant did make an inquiry on an alternate rental unit that the landlord was not able to assist with. This left the tenant no other immediate option besides a somewhat lengthier stay at a hotel. I find the tenant received messages from the landlord stating the landlord would cover this cost, albeit short term. By November 22, the landlord was advising of an expected re-opening of the rental unit by the following Wednesday. Without further definition, I find this is an indication of Wednesday December 2, which was the tenant's move-out date. There is nothing in the evidence to show the landlord tried to cut the tenant's hotel stay short: no reminders or requests are in place to show this.

Strictly speaking, the messaging from the landlord here shifted. The landlord gave the message to the tenant that the hotel cost was a matter of insurance; however, this was not entirely clear to the tenant, and then the tenant received a message indicating the landlord would cover some hotel cost. The landlord's move here, in stepping away from the tenant's need for renter's insurance, is not in line with that requirement as set out in the addendum. I appreciate the landlord was dealing with several simultaneous difficulties; however, this message puts forth a solution that lies outside of the tenancy agreement. I find the landlord's messaging here was not intentionally unclear; throughout, they expressed regret to the tenant for these upsetting events.

For these reasons, I find the landlord shall pay the reimburse the tenant for the cost of the hotel. I grant this claimed amount $2,002.85 to the tenant in a monetary order. The tenant has discretion on their service of the monetary order to the landlord. There is a claim before the city for a combination of landlord's damages and those of the tenant. It would be most disingenuous for the tenant to serve this monetary order should they receive compensation for the hotel stay from the city via the landlord.

On the tenant's additional pieces, they did not provide sufficient evidence to either show the value of the damage or loss, or to prove that a damage or loss exists. The claim for laundry is not substantiated. The equation for wifi/internet and hydro is not explained in sufficient detail as to warrant repayment. With the same rationale as above, I find the damage to the furniture is not established as being due to any breach by the landlord; therefore, the cost of its removal shall not be borne by the landlord. This cost alone relates to the end of tenancy which in any event would involve moving as was the choice taken by the tenant at that time.

Because they were not successful for the bulk of their claim, I find the tenant is not entitled to recover the Application filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order for $2,002.85. The tenant is provided with this Order in the above terms and the tenant has discretion on how to serve this Order to the landlord. Should the landlord fail to comply with this Order should the tenant serve it, the tenant may file this Order in the Small Claims Division of the Provincial Court where it may be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 7, 2021

Residential Tenancy Branch