Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT; MNDCT, OLC, RP, RR, MNRT, FFT

Introduction

The tenant filed their initial Application for Dispute Resolution (the "Application") on April 1, 2021 for an order that the landlords make emergency repairs in the rental unit. Additionally, they applied for reimbursement of the Application filing fee.

The tenant filed a second Application on April 1, 2021 for:

- repairs to the rental unit
- a reduction in rent for repairs not provided
- the landlords' compliance with the legislation and/or the tenancy agreement
- reimbursement of the cost for repairs that they paid for
- compensation for other monetary loss
- the Application filing fee.

The matter proceeded to hearing, by s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 20, 2021, and again on September 8, 2021. This was to facilitate the hearing of a separate matter with the tenant's current landlord.

At the initial hearing both parties confirmed that they received evidence prepared by the other. I explained the process and offered each party the opportunity to ask questions. The tenant and their former landlords (i.e., the Respondents here) attended the September 8 hearing. Each party had the opportunity to make submissions and present evidence.

Preliminary Issue

The property with the rental unit in issue changed ownership in April 2021. The Respondents in this dispute resolution are the tenant's former landlords (hereinafter named the "landlord"). The relationship between these parties ended in April 2021. At the time of the tenant's initial Application on April 1, 2021 the landlord-tenant relationship had not yet ceased.

The tenant's initial Application was for the landlord to carry out emergency repairs for health or safety reasons. Given that the relationship between these parties ended, it is not possible for me to decide that the former landlord must carry out emergency repairs. I dismiss this piece of the tenant's initial Application without leave to reapply. Because they did not withdraw this initial Application filed on April 1, 2021, I make no award for reimbursement of the Application filing fee.

Similarly, in the tenant's second Application, it is not possible for me to order the landlord's compliance with the *Act* or the tenancy agreement where the relationship has ended. Nor can I order the landlord to complete repairs as requested. I dismiss these portions of the tenant's second Application without leave to reapply.

Issues to be Decided

- Is the tenant entitled to compensation for their monetary loss or other money owed, pursuant to s. 67 of the *Act*?
- Is the tenant entitled to reimbursement for the cost of emergency repairs they made during the tenancy, pursuant to s. 33(5) of the *Act*?
- Is the tenant entitled to a past reduction in rent, payable as compensation, pursuant to s. 65 of the *Act*?
- Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In their written submission, the landlord stated the agreement started at $1,400 rent, with a $200 rent reduction. For this, the tenant "would in return be responsible for all maintenance and repairs throughout the tenancy." A separate clause states: "The

tenant will be responsible for any repairs and will get approval from landlord for any major repairs." The agreement has both parties signing the agreement on June 6, 2010 for the tenancy starting on that same day. The current rent amount as of the end of the landlord-tenant relationship was $1,893.

In the hearing, the tenant provided that the "house fell into massive disrepair". There was minor flooding in 2015, and "water issues really started" in 2018. The tenant's suggestion to the landlord in 2018 and 2019 was that a plumber should inspect, due to very high water bills.

The tenant described a flooding event that started on January 31, 2020: "One of the drains backed up and allowed approximately a foot of water to gather throughout the basement." This caused water damage to personal belongings and led to the growth of mould throughout the basement in the following weeks.

A representative from the municipality attended and concluded they could not do much; however, the landlord did not attend and then told the tenant a plumber was not immediately available. The tenant on that same day purchased a water pump, with a modicum of success on lowering the water level.

On checking again, the landlord informed the tenant that a plumber could only arrive on February 5. This led to more cleaning and salvaging of items from the basement by the tenant. The plumber that visited did not adequately assess the cause.

Throughout February and into March, the tenant still salvaged items and the remaining water was below the pump level. They found mould growing on drywall, within each basement room. This growth affected the tenant's ability to use the central heating system. For these efforts, the tenant claims as follows:

Item(s)	$ Amount Claimed
labour to clear flood -	2,160
cost of pump	209
work boots	140
Total	2,509

This amount of labour represents 42 hours of work in February and March clearing water from the basement. Moving items from the basement took another "approximately 30 hours." Their claimed amount here is based on their own salary of $30 per hour.

The tenant included a copy of the receipt for the pump they purchased on January 31, 2020. They provided a photo showing the pump at work in the basement. As well, the tenant had two pairs of work boots that were "destroyed", for the value of $140.

The tenant submits that the basement was left "uninhabitable". A separate drain in the house always has standing water, and when using a shower this again floods the basement. The basement also floods during light rain, and mould "has appeared on both the floor and walls."

In November 2020 a dispute resolution hearing was held regarding the flooring and other general repairs. The arbitrator recorded the parties' agreement to settle. This includes: the landlord's provision of tradespeople at their own expense; a professional check for mould; and other separate items to be repaired with certain dates for completion. The tenant submits here that repairs started, then dropped abruptly in November, with the landlord then attempting eviction.

When purchasers took ownership of the property in April 2021, the tenant informed them of the extant needs for repairs. In the hearing, the tenant provided that the purchasers completed "most of the 10". As stated: "it took a new transfer in March 2021 for things to be done."

The tenant claims compensation for the loss of quiet enjoyment throughout this total timeframe. In this time period, the tenant was paying full rent. In the tenant's summation, the landlord took the position where they were not going to complete repairs. The tenant's claim is based on a rent reduction, for the full amount of rent they paid for this entire time since severe flooding began in January 2021, and rent paid since the deadline to complete repairs, through to July 2021. This amount, as written on the tenant's Monetary Order Worksheet, is $31,568.

The tenant receipts they provided into evidence add up to $35,202.40. These show miscellaneous amounts of rent paid, from $1,939, $1,893, and a period of time in spring and summer 2020 of $1,492.50.

The tenant also claims for a damaged rug amount for $300. On their Monetary Order Worksheet they stated there was an estimate and photos, and described the damage due to "bug infestation". In the tenant's evidence appears one photo of a discrete damaged area of a larger piece of carpet or rug.

In their written submissions and oral testimony, the landlord maintains that they were attuned to the issues of flooding and the need for repairs in the rental unit; however, their efforts at assisting the tenant came to naught when the tenant would not allow them access to either inspect damage or attend to begin repairs. This left the prescribed list of repairs unfinished after the settlement in November 2020.

The landlord made the following submissions:

- The basement of the rental unit is unfinished. This means the walls are "sparse", the floors are bare concrete, and the ceiling may be exposed, making it "not intended for [a] habitable place."
- From July 2020 through to October 2020 the landlord made four attempts to access the rental unit. Each attempt was made with proper notice to the tenant. The tenant "said [the landlord has] no right to see the property." This was despite written notice, calling and emails stressing the need to inspect the condition of the property.
- Other parties who visited to the property with the landlord provided written statements; these state that the tenant would not allow entry or would not return calls to schedule visits. By October 2020 the tenant told one of these individuals that the tenant knew the cause of that distinct issue, and would fix it on their own. This individual entered the basement and "there was no water or moisture in the basement."
- A plumber did attend to the rental unit on the day following the flood, February 1st. On March 26 the landlord attended to observe no water in the portion of the basement they visited, and the tenant would not allow any further inspection. The tenant did not mention flooding or the need for other repairs or maintenance.
- The landlord had a mould assessment completed in November 2020. This revealed "no fungi". Moreover: "Potential water intrusion/indicator mold and potential water intrusion/indicator mold capable of mycotoxin production was NOT FOUND ON THE TEST." This report was part of the agreed-upon items from the November 2020 dispute resolution decision. The tenant maintained they did not see the copy of this report prior; the landlord stated the tenant called the mould inspector on their own and received a verbal status report directly from the inspector.
- The landlord completed some repairs in line with the settlement decision of November 6, 2020. This was work in the upstairs bathroom. The tenant prevented completion of further repairs by not answering calls or helping to arrange for visits and/or work. A plumber attested by letter in the landlord's evidence of their calls to the tenant on November 17 to arrange a visit; however,

the tenant did not return calls. Similarly, a hired hand provided that the tenant would not assist with scheduling gutter installation.

- The lack of communication from the tenant also led the landlord to conclude that an insurance claim for flooding was not possible where the tenant would not allow an inspection. The tenant allowed "no viewings, no pictures."
- The landlord completed the sale of the property in March 2021, this "without any viewings, pictures, or any open house". The tenant did not allow viewings and was not cooperative during the process. This resulted in a significant price reduction in the sale.
- The landlord also provided evidence of the tenant altering the rental unit by adding parking space and security cameras, modifying the basement to add walls and an additional bathroom.

In total, the landlord was allowed only a few hours of access in October to make repairs. As part of their attendance and exchange of evidence in previous hearings, the landlord asked the tenant for communication on repair status; however, they never received information back from the tenant.

In response to this, the tenant maintained they were not given proper notice of visits from the landlord. Typically, this occurred prior to a weekend when the tenant was not aware. The tenant also pointed to conflicting information in the accounts of individuals retained by the landlord to attend and inspect the scene for repairs.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

I find the evidence is clear that there was a flood event on January 31, 2020. The landlord did not object to the fact of a flood event.

The largest portion of the tenant's claim is reimbursement for rent paid since the date of the flood on January 31, 2020. On their monetary worksheet, they refer to this as "severe flooding", presumably to emphasize that flooding was ongoing throughout 2020 and into April 2021 when they filed their Application.

With my review of the timeline, and all evidence and testimony provided by both parties, I find as follows:

- The tenant submitted that throughout February and March 2020 they continued cleaning and removing water from the basement. This entailed removing possession from that basement. By March 26, 2020 I find as fact the landlord attended to clean stains in one of the basement rooms; however, they did not have access to all of the basement. The landlord noted no water present; more importantly, they submitted that the tenant did not raise a concern about ongoing flooding at that time. I accept this as fact; the tenant did not present clear statements or evidence to show otherwise.
- The tenant paid rent for each of February and March 2020, at $1,893 for each of these months. The evidence for this is rent receipts in their evidence.
- I accept the landlord's evidence that the basement was not lived in, and the tenant did not state otherwise. I find that the flood in the basement, though needing immediate attention in the short term, did not impact the tenant's day-to-day living in the rental unit to the extent that the entire rental unit was unlivable. There was no interruption to the tenant's own job or ability to live within the rental unit. There is no evidence of interruption to cooking, eating, laundry, bathroom, sleeping, or leisure. My finding on this broader point is that the full amount of rent as recompense for any period of time is not warranted or commensurate with the flooding issue.
- There is no information from the tenant for the following months of April, May or June. I find there was no activity with the landlord during this time, and no contact from the tenant to the landlord. In line with the s. 7(2) necessity for mitigation, I cancel these months from the tenant's claim, with no record of the tenant dealing with the situation or contacting the landlord on this issue.

- In a July dispute resolution hearing, the tenant raised the issue of flooding and mould in the hearing. There is no record that the tenant amended their Application for that hearing to include this specifically. As stated by the tenant, the Arbitrator advised it was too late to raise that issue. From this I conclude the tenant was not mitigating loss by attempting to resolve the issue, despite the measure of dispute resolution being known to them. I find this plainly is not the tenant mitigating damage. This stands as evidence they did not raise the issue with the landlord directly and did not utilize the hearing process to resolve the issue.
- In August-September 2020, the tenant disputed a rent increase; however, they did not properly apply on the separate issue concerning the flood or mould. It appears they raised the issue as merely part of their submission on the landlord's compliance with the *Act* and/or the tenancy agreement. They did not apply for repairs or rent reduction for lack of repairs. From this I find the issue was not truly interrupting the tenant's living arrangement to the degree stated. Again, during this time, there is no record the tenant was communicating with the landlord to resolve the flooding issue.
- Additionally, and key to all of the true nature of the issue on flooding, at no time from the start of the flooding issue did the tenant apply to have the issue resolved on an emergency basis. That only came with their Application on April 1, 2021, dismissed above. This was despite what the tenant claims was an issue interrupting their living within the unit, and a significant number of ongoing live dispute resolution proceedings.
- For the time period involving the two prior hearings, I conclude the period from July through to November saw no communication from the tenant to the landlord on an attempt to resolve the flood/mould issue; therefore, I cancel them from any consideration of compensation.

Two months after being advised by the July Arbitrator that flooding and mould were issues not within their purview, the tenant applied for repairs in September. This hearing in November resulted in the listed 10 items. I find the landlord acted in good faith and accomplished repairs that were within their ability to do so. This was the repairs in the bathroom upstairs, and even more importantly ordering a mould assessment. I find this shows the landlord did not take matters lightly, and responded to a proper assessment and canvassing of the issue by the November 2020 Arbitrator.

I find it more likely than not that the landlord's efforts at rectifying any matters involving the basement were blocked by the tenant. By this point, the true state of the basement was not known to the landlord. The tenant here stated the issue was a large matter that

affected their living within the unit; however, I find their responses to the landlord's submissions on the tenant's evasiveness are not in line with this stated ongoing problem. There is no evidence the tenant was helpful or cooperative, in order to have the landlord accomplish repairs that were listed by the Arbitrator. My finding on this partly carries over from the months prior where there was no record of the tenant attempting communication on this. Additionally, I accept the accounts from tradespeople provided by the landlord that show the tenant did not return calls or otherwise attend to ensure visitor access. For these reasons, I cancel the months following the Arbitrator ruling, for November 2020 through to the 2021 end of the landlord-tenant relationship.

Again, the tenant paid $1,893 for each of the months of February and March 2020. I find this is the time when they were dealing with flooding and water issues. The record is not clear on the tenant's attempts to contact the landlord at this time; however, I find the landlord was aware of the flood issue and the evidence is scant on the landlord attending to assist or inspect the issue. The only record is the landlord attending on March 26 to attend to issues involving the walls of the basement.

For these reasons, I find the only amount of compensation for which the tenant is eligible is during this initial period prior to the landlord's first attendance on March 26. Given the smaller impact to the tenant's living arrangement in the rental unit (outlined above), and a lack of evidence on the true impact of the flood, I award the tenant 10% for each of February and March 2020 rent. I make this award only because of the gap in the landlord's evidence on this initial phase. In sum, the landlord did not outline what their immediate response to the issue of the flood was. The amount to the tenant for this portion of their claim is pro-rated for 26 days in March, and the full amount of February, for a total amount of $348.07.

In line with this, I find the tenant is entitled to compensation for their purchase of a pump to deal with the immediate situation. This is with no evidence on the landlord's ability to immediately assist the tenant. I find this was a reasonable measure to stop emergency flood concerns. I award $209.66 to the tenant as shown in their evidence.

The tenant has not provided a description of their work boots, the value thereof, nor a description of how they were damaged specifically. Without evidence, I cannot determine that a damage or loss exists for this portion of the tenant's claim. There is no compensation for this.

The tenant claimed a larger portion for their own labour in cleaning out the basement and removing water. There is no record that itemizes the work involved, nor is there a description that shows specifically what work was needed. The tenant did not show a breakdown of items in total needing removal, nor how it took approximately 30 hours. There are photos of items in the basement; however, I find this is not sufficient evidence to show the amount of work involved. The tenant did not provide a description of their own work as a reference point for an hourly amount that is commensurate with their own work. There is a lack of detail for this portion of the tenant's claim; therefore, I cannot determine the value of that loss. There is no compensation for this portion of the tenant's claim.

There is no evidence for the tenant's claimed amount of wool rug damage. They provided one single photo, showing a separate area of damage or wear. There only a listed claim of $300 with no description of damage, its origin, or the size or dimensions. I am not satisfied that a damage or loss exists, and there is plainly no evidence to establish the value thereof. There is no compensation for this portion of the tenant's claim.

Because of the tenant's success in establishing part of their claim, I award $25 partial reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $582.73. The tenant is provided with this Order in the above terms and the tenant must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it 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: September 22, 2021

Residential Tenancy Branch