



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the outset of the hearing, both parties confirmed that the legal name of the landlord was incorrect on the application. The proper name of the landlord was confirmed in the hearing. As neither party was opposed, the landlord's name was amended to reflect the proper name.

As the landlord confirmed receipt of the tenant's application, I find that the landlord duly served with the tenant's application. Both parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed with the hearing.

At the outset of the hearing, the tenant confirmed that the repairs have been completed, and that the tenant wished to proceed with just the monetary portion of their application. Accordingly, the hearing proceeded to deal with the tenant's monetary claim, and the other portion of the application was cancelled.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began a fixed-term tenancy on November 1, 2011, and continued on a month-to-month basis with monthly rent currently set at \$805, payable on the first of the month. The landlord had collected a security deposit in the amount of \$350.00, which the landlord still holds.

The tenant is requesting compensation equivalent to three month's rent for losses associated with an incident that took place in the tenant's rental unit on March 30, 2021. It is undisputed by both parties that on March 30, 2021, the caretaker had disconnected a plumbing supply line from a malfunctioning supply line valve, which resulted in the tenant's bathroom, living room, and dining area floors being damaged by water. The event caused damage to two units below the tenant's as well.

The landlord testified that flood remediation attended right away, with equipment brought in to dry the air, and attempt to mitigate the water damage. The landlord testified that they obtained competing quotes for repairs, and the building owner submitted an insurance claim. On April 29, 2021, the landlord's insurer informed the landlord that the affected tenants would have to rely on their own insurance coverage to cover the costs of damage to their personal effects and displacement. The landlord submits that they were dealing with many moving parts at the same time. On April 5, 2021, the landlord had received positive results for asbestos in the joint compound used for the original drywall.

In order to assist the tenants, the landlord hired a local hauling contractor to move the tenants and their belongings to temporary accommodation within the building. The tenant was temporarily moved to a newly renovated unit for the period of July 12, 2021 through to July 28, 2021 when the repairs were completed in the tenant's rental unit. The tenant testified that the flood caused them to not only suffer financial losses, such as the cost of removing and storing their personal items in a storage facility, the tenant had to wait several months while remaining in the rental unit until July 12, 2021 when

the tenant was finally provided alternative accommodation, and the repairs could be finally completed. The tenant described in their written statement and in the hearing of the affects on their physical health the incident caused, which the tenant attributed to dust and mould, and possible exposure to asbestos and other contaminants caused by the damage and repairs. The tenant testified that they were affected by the machines as well as the heat. The tenant testified that they suffer from arthritis, which was aggravated by having to take the stairs.

The tenant submitted the receipts and invoices associated with the costs of having to store their personal items.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it

stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 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.”

In this case the tenant requested a monetary order equivalent to the full monthly rent for a period of three months. As noted above, In assessing their claim, the party applying for dispute resolution bears the responsibility of demonstrating entitlement to that monetary award. In the case of a Frustrated Tenancy, a tenant would normally be entitled to the return of the rent from the point where it is determined the contract was frustrated.

Residential Tenancy Policy Guideline 34 states the following about a Frustrated Tenancy:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the

manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

In consideration of the evidence and testimony before me, I am not satisfied that this tenancy meets the definition of a Frustrated Tenancy as clarified by RTB Policy Guideline 34. Despite the fact that there was damage to the rental unit from the flood, and despite the confirmation of asbestos in the rental unit, the tenant continued to reside in the rental unit. Although I am sympathetic about the fact that the tenant was not able to move into alternative accommodation until July 12, 2021, I find that the tenant was still able to occupy the rental unit until that point. Accordingly, I find that the rental unit was still inhabitable, and the tenancy does not qualify as a Frustrated Tenancy.

Although the tenant requested a monetary order equivalent to one hundred percent of the rent for three months, I find that the tenant did not provide sufficient evidence to support that they suffered a loss equivalent to that amount. Although the tenant felt that there was a significant delay in completing the repairs, and although the tenant attributed the health issues they suffered to the repairs and state of the rental unit, I find that these claims were not sufficiently supported in evidence. I find that the landlord provide sufficient evidence to demonstrate that they had fulfilled their obligations in attempting to mitigate the losses for all parties, while undertaking the repairs as soon as possible. I find that the landlord had provided alternative accommodation, and moving services, despite the fact that the landlord's insurer declined to cover the costs which they felt should have been claimed under the tenant's own insurance.

In consideration of the tenant's monetary claim, I do find that the tenant did suffer a significant reduction in the value of the tenancy agreement due to the flood and resulting repairs. I find that that the repairs were not completed until July 28, 2021, and that for the period of March 30, 2021 through to July 12, 2021, the tenant was not bale to enjoy the rental unit as they normally would have before the incident took place.

find that the tenant is entitled to some compensation for the reduction in the value of the tenancy associated with the flood. The tenant submitted receipts for the cost of using a storage facility which totalled \$362.88. I find that the tenant would not have had to use this service if the flood did not take place, and accordingly, I find that the tenant should

be reimbursed for this monetary loss. Accordingly, I allow the tenant a monetary order for this loss.

Although I am sympathetic to the fact that the tenant felt ill, and experienced discomfort following the flood, and while awaiting repairs, I do not find that the tenant had provided sufficient evidence to support that the medical issues suffered by tenant was directly and solely attributed to the landlord's actions. As the burden of proof is on the tenant to support their claim, I find the tenant's claim falls short in terms of these claims.

As stated above, I do find that the tenant suffered a reduction in the value of the loss of the tenancy. In this case the tenant requested a rent reduction equivalent to rent for three months. I am not satisfied that the tenant provided sufficient evidence to support that they suffered a hundred percent reduction in the value of their tenancy for three months due to the landlord's actions.

I find that the tenant is entitled to some compensation for the reduction in the value of the tenancy agreement. As the tenant was able to continue living in the rental unit, I find that a twenty-five percent rent reduction for the period of April 1, 2021 through to July 12, 2021 to be fair. Accordingly, I allow the tenant a monetary order of \$690.96 ($\$805.00/30 \times 103 \text{ days} \times 0.25$)

Conclusion

I issue a Monetary Order in the amount of \$1,053.84 in the tenant's favour.

I allow the tenant to implement the above monetary awards by reducing future monthly rent payments until the monetary order is paid in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$1,053.84, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 10, 2021

Residential Tenancy Branch