



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, LRE, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant. The tenant had applied for an order cancelling a notice to end the tenancy for cause; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the cost of emergency repairs; for an order limiting or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The hearing commenced on September 10, 2021 and I severed the application for an order cancelling a notice to end the tenancy for cause, which was heard and adjourned to September 24, 2021 for continuation. On September 24, 2021 the parties agreed to end the tenancy and an Order of Possession was granted to the landlord by consent.

The balance of the tenant's application was adjourned to October 25, 2021.

The tenant and an agent for the landlord attended the October 25, 2021 hearing, and the tenant was accompanied by 2 legal representatives. The tenant and the landlord's agent each gave affirmed testimony and the tenant called 1 witness who gave affirmed testimony. The parties, or their representatives were given the opportunity to question each other and the witness and to give submissions.

My previous Decision specified that any evidence that either party wishes to rely on, including any amendment must be served to the other party not less than 14 days before the October 25, 2021 hearing. The tenant has provided evidence on October 23 and October 25, 2021. I advised the parties that the evidence filed on October 25, 2021 will not be considered in this Decision. Counsel for the tenant submitted that the

evidence provided on October 23, 2021 is an unredacted version of evidence that was provided by the landlord previously, but was redacted. Counsel for the tenant believed it was appropriate to provide the unredacted version. The landlord's agent submitted that the redacted version was made for a specific purpose which is why it was redacted, and is not opposed to inclusion of the unredacted version. Therefore, all evidence except the evidence filed on October 25, 2021 has been reviewed and is considered in this Decision.

Since the tenancy has ended, I dismiss the tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of the rental unit?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?

Background and Evidence

The tenant's witness is the tenant's son as well as a shareholder of the numbered company named as a tenant in the tenancy agreement.

The witness testified that this fixed term tenancy began on November 7, 2020 and was to revert to a month-to-month tenancy after November 30, 2021, which ultimately ended by consent on October 12, 2021. Rent in the amount of \$5,000.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$2,500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment in a strata complex, and a copy of the tenancy agreement has been provided for this hearing. A move-in condition inspection report was completed, but a copy has not been provided for this hearing.

On November 18, 2020 the witness was in the main living area with family preparing dinner and heard a loud scream from the bathroom, and hot water was pouring out of the valve of the sink. He immediately grabbed a towel and attempted to prevent water

from spraying across the room. The witness and other family members attempted to contain the water on the floor with more towels, oven mitts and blankets in an attempt to mop it up and prevent it from getting worse, but could not locate a turn-off valve. The witness looked under the sink, under both drawers where it should be but there was no water shut-off valve anywhere in the bathroom. The metal component for the hot water valve for the sink had completely come off and water poured straight out of the hose.

Family members took turns mopping it up because the water was hot, and calling plumbing companies. The concierge arrived but didn't know where the water shut-off was, and it took the fire department about 40 minutes to arrive while hot water continued to spray during the entire time. It is a new building and there was no emergency plumbing number with the concierge, and the fire department spent about 20 minutes trying to locate the water shut-off, which was finally found in a closet in the 2nd bedroom behind some clothes, behind a built-in cabinet. It took more than an hour to locate it. The next morning a plumber re-attached the metal tap. After the plumber was done the tenant had a cleaner attend to clean the bathroom and hallways. The landlord's agent also arrived on November 19, 2021. The witness had contacted the landlord's agent late in the evening, and told her the next day about the water damage, and that the restoration company was aware and had put dryer units in.

The plumber indicated that the tap had a defect, and a video has been provided for this hearing. The developer hired a restoration company attend and fans and a heating unit were put in the halls and bathrooms, which remained until around December. Also, hardwood floors and baseboards had been damaged; drywall was replaced on walls that had moisture and were painted. It took well into the new year for the work to be completed, and during that time, the equipment in the rental unit prevented the witness' grandmother from walking in the kitchen with her walker or wheelchair.

In February, 2021 the witness assisted his father with emails to the landlord. Work had finished and the tenant and the witness' grandmother were planning to resume living there, and the witness drafted an email asking the landlord to respond about abatement for rent, but received no response. The email also advised the landlord of electrical issues, which came to light after the restoration company completed the work. The tenant and witness expected abatement until repairs would be completed, and the witness advised the landlord in the emails that the tenant would be looking for another place to live, but no response was received.

In late March, 2021 another plumbing issue came up in the same bathroom. Raw sewage was coming up from the shower drain. The witness tried to contact the

previous plumber that had attended, but they couldn't attend again right away. Another plumbing company arrived within a half hour and they contained the sewage and snaked the toilet and shower drain, and said it was a building related issue and that the sewage came from another unit. The plumber was paid with the tenant's credit card.

On March 31, 2021 the witness had a conversation with the landlord's agent about the sewage issue, who said she would send the invoice to the owner. The witness asked her about it twice after that but said she had no update, and the tenant has not been reimbursed the costs. An invoice totalling \$1,458.00 has been provided as evidence for this hearing.

On April 19, 2021 the witness sent an email to the landlord on behalf of the tenant saying that there had been no response and no reimbursement, and asked if the landlord had dealt with a circuit breaker with the developer. The landlord has never responded and neither the witness nor the tenant received a failure notification if the emails had not been delivered.

The tenant found a sub-tenant to occupy the rental unit in April, having received no response from the landlord.

The witness has also provided an Affidavit as evidence for this hearing, which the witness testified is true to the best of his knowledge and belief.

The tenant testified that he moved into the rental unit by the 10th of November. His father had passed away and the tenant undertook his 91 year old mothers' care; it was a 2 bedroom unit.

It was a very stressful evening on November 18, 2020 to try to contain the hot water. For the last half of November and into December, when the tenant and his mother, the tenant split up occupying the rental unit and staying with family. They left for a short term in December. The tenant and his mother couldn't function normally in the rental unit and his mother uses a walker or wheelchair. The layout of the apartment was an ordeal for her with a multitude of equipment. The tenant and the tenant's mother were in and out, and the tenant's mother continued to occupy the bedroom in the rental unit at night for almost 2 months. The tenant brought her to the front of the apartment during the day and set her up on the couch, but it became next to impossible to live in.

When they were not at the rental unit, the restoration company would message the tenant for access and he would let them in. The hardwood floor was glued to the concrete floor and to suck water out was difficult. They had meters and would measure but did not get

the readings they were looking for; it was difficult to dry. Trying to circulate air and to attack the drying process and prevent mold, equipment stayed in the halls for a long time. After the equipment was removed, other work restoring the rental unit had to be done, including the drywall, insulation, painting, cleaning hardwood. All components had to be repaired, which went into January or beginning of February. From mid-November until February, 2021, there was no period in which the tenant was able to occupy the rental unit free of workers or equipment.

In March, 2021 another plumbing issue caused the tenant to contact a plumber; raw sewage was raising up from the shower drain. The tenant authorized his credit card to pay for it.

The health of the tenant's mother was suffering and they had just lost the tenant's dad, and the stress of not having an apartment and normal life made it impossible, so the tenant found another option. At the end of March, 2021 the tenant found another rental to commence April 1, 2021.

The tenant has provided an Affidavit which he confirms is true to the best of his knowledge and belief.

The tenant has also provided a Monetary Order Worksheet setting out the following claims as against the landlord, totaling \$19,458.19:

- \$1,458.19 for plumbing repair;
- \$3,000.00 rent abatement for November, 2020;
- \$5,000.00 rent abatement for December, 2020;
- \$5,000.00 rent abatement for January, 2021; and
- \$5,000.00 rent abatement for February, 2021.

The landlord's agent (hereafter referred to as the landlord) testified that no plumbing issue was noted during the move-in condition inspection. A few days later the strata manager notified the landlord that an emergency repair had been arranged. The landlord contacted the developer and strata manager to investigate how it happened, and the strata manager emailed the landlord stating that in talking to the plumber and repair company, they came to the conclusion that it was not a failure of the faucet, but misuse, which was denied by the tenant. The email states that the strata manager received confirmation from the restoration company and a formal report from the developer. The developer's comments are provided in bold print on the email, which states that the owner was provided an orientation on June 8, 2020 and there was no mention of any issues with the bathroom faucets, and that the developers advise homeowners of the location of water

shutoffs in case of emergencies, which is also provided in a video link in the homeowner manual. It also specifies that the leak was reviewed in detail and the cause is not due to the faucet failure, and that information regarding the location of the water shuts was provided to the concierge. The strata manager adds in the email that the faucets had been checked multiple times by the developer, City plumbing inspector, and architect and is unlikely that the faucet was installed incorrectly. The faucets installed in the building have a 90 degree turn from off to fully on, and if the hot tap is turned past the 90 degree point it will start to unscrew the cartridge but will require some force.

The landlord attended the rental unit on November 19, 2020 and believes the condition of the rental unit was manageable, but should have been communicated by the tenant so that options or solutions could be sought, but it was never brought up. It seemed fine and the tenant seemed fine, so the landlord assumed it was fine.

The tenant's mother has also sworn an Affidavit indicating that she was washing her hands and water sprayed out when turning off the tap.

The tenant made no complaints of comfort living in the rental unit from November, 2020 up till August 21, 2021, and the landlord was only aware of the tenant's discomfort from the Affidavit. The landlord has not received an invoice or request for repairs from the tenant until the last hearing at the end of August when submitting evidence; that's the first time the landlord has seen the bill for \$1,458.19.

The landlord also testified that other locations in the building were also affected, and when it happened, no one notified the landlord and arrangements were done by the strata before the landlord became aware of it.

The landlord received a strata application about unregistered tenants for February, 2021. The tenant had testified that his sub-lease started on April 1, 2021 but also said that the tenant lived there. In February and March, others were living there, not the tenant or his mother.

The landlord further testified that the tenant's mother was not on the lease or present during the move-in condition inspection, and the tenant never asked her to be added to the lease agreement, has never been a tenant, and is not named in the Form K. After the plumbing incident, the tenant told the landlord that the tenant's mother had moved in because his father passed away and he had to have her stay for awhile. It's okay to visit, but should be on the lease if living there.

The landlord has not received any request for abatement of rent or reimbursement, and never received any notice about the 2nd plumbing claim or incident, nor any request to reimburse. The tenant has insurance which covers sewer back-up.

Numerous written submissions have also been provided by the landlord.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

This was a fairly clear major issue respecting plumbing due to something beyond the tenant's control causing a significant issue with the tenant's ability to enjoy the property in a reasonable state. The tenant was in and out trying to deal with it and what's reasonable and fair is to have abatements to rent. Legal Counsel submits the amount that should be allotted is at least 2 ½ months rent. The landlord was aware and turning a blind eye to it. Now the tenant is being told that it was caused by the tenant.

The raw sewage situation is also at feet of the landlord who is responsible for all emergency repairs.

SUBMISSIONS OF THE LANDLORD:

The tenant claims that the rental unit was not liveable, but it was not unliveable.

Communications that the tenant repeatedly says were sent were not received by the landlord. There is no way that the landlord would fail to respond to an emergency issue; that doesn't make sense.

Analysis

I have reviewed all of the evidence, and neither party has complied with the *Residential Tenancy Act*.

Section 33 of the *Act* requires a landlord to post and maintain in a conspicuous place or give to the tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs, which the landlord has not done. Providing the tenant with a handbook and a welcome video does not suffice.

33 (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

A tenant may deal with emergency repairs and seek reimbursement from any costs associated with those repairs from the landlord, but there are rules around that.

33 (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I accept that the tenant contacted the concierge and fire department, but no one could find the shut-off valve for the hot water and the tenant did what was necessary to mitigate damage. However, I also accept the undisputed testimony of the landlord that the tenant didn't provide a receipt to the landlord for any of the plumbing costs as required under subsection (5):

33 (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

33 (7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Subsection (5) does not apply if the emergency repairs are for damage caused by the actions or neglect of the tenant or guests. The only evidence before me that the damage was caused by the tenant is a string of emails provided by the landlord wherein the strata manager advises that the plumber and developer advise that it was caused by the tenant. None of the reports of the developer or the plumber have been provided to specify that. The tenant's position is that the plumber who attended for the hot water spray indicated that the cause was a defect in the taps, and the video provided by the tenant indicates that there was definitely a problem with 1 tap out of 4.

The hot water spray occurred on the 11th day of the tenancy, and I am not satisfied that the tenant's 91 year old mother, who is obviously quite frail using a walker and a wheelchair would have the strength to damage the tap or the fitting. Further, the hot water spray was not the only plumbing issue, and the landlord's evidence indicating that the spray was caused by misuse does not explain the raw sewage in the shower drain.

The landlord insists that none of the emails that the tenant and witness testified were sent to the landlord were received by the landlord. Perhaps the emails were directed automatically to a “junk” folder. However, since the landlord has not posted a notice in a conspicuous place containing a phone number for emergencies, I find that the tenant is entitled to recovery of the plumbing bills paid totaling \$1,458.19.

With respect to the tenant’s application for monetary compensation for loss of full use of the rental unit during the remediation process, I have also reviewed the strata complaints about sub-letting provided by the landlord, wherein the tenant had sub-let the apartment, but that didn’t happen until February, 2021.

The tenant claims \$3,000.00 rent abatement for November, 2020 however my calculation shows that from November 18 to November 30 is 13 days which would equate to \$2,166.66. The tenant also claims rent abatement in the full amount of rent for the months of December, 2020 through February, 2021. The tenant testified that for the last half of November and into December the tenant and his mother could not function properly in the rental unit, and that it took almost 2 months. He also testified that from mid-November till February there was always equipment and workers.

The landlord testified that the work completed in December, however if it was not livable, the tenant ought to have told the landlord.

The landlord also testified that the rental unit was not unlivable, and I accept that, albeit not very comfortably with fans blowing and equipment around. I am satisfied that the tenant has suffered damages due to the plumbing issues in the rental unit, but not such that the tenant should recover all rent paid from November through February, but 50%, or \$1,083.33 for November, 2020 and \$2,500.00 for December, 2020.

The tenant and witness testified that hardwood floors, baseboards, drywall and painting were still required after the remediation equipment was removed, and that from mid-November until February, 2021 there was no period in which the tenant was able to occupy the rental unit free of workers or equipment. However, the evidence also shows that the tenant had sub-let the rental unit in February. I am not satisfied that the tenant has established a claim for loss of use of the rental unit in January or February, 2021.

I further find that the tenant has not established that any damage or loss was suffered in March, 2021 due to the shower drain incident, perhaps potentially, but was dealt with quickly and a minor inconvenience.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

In summary, I find that the tenant has established a monetary claim for the cost of emergency repairs in the amount of \$1,458.19; damage or loss in the amount of \$1,083.33 for November's rent abatement; \$2,500.00 for December's rent abatement and recovery of the \$100.00 filing fee for a total of \$5,141.52.

Conclusion

For the reasons set out above, the tenant's application for an order limiting or setting conditions on the landlord's right to enter the rental unit is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,141.52.

This order is final and binding and may be enforced.

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 02, 2021

Residential Tenancy Branch