



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act"). The Tenant applied for a monetary order for money owed or compensation for damage or loss. The matter was set for a conference call.

The Tenant and the Tenant's Advocate (the "Tenant") as well as the Landlord's Agent (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement signed on December 29, 2010, recorded that this tenancy was a month-to-month tenancy, for subsidized rent, and that no security deposit was collected by the Landlord for this tenancy. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that there was a flood in the rental property on September 3, 2022, that was caused by a ruptured pipe, and that due to damage to the rental property, the Tenant's rental unit was uninhabitable between September 3 to October 29, 2022.

The Tenant testified that they are claiming for \$6,718.07 to recover their losses caused by a flood in their rental unit, consisting of \$6,491.44 in hotel costs, \$60.00 laundry costs, \$22.38 for garbage bags, \$45.51 for tarps, \$33.49 for packing boxes, and \$65.25 for wall hooks and a new light.

The Tenant submitted that the flood was caused by the Landlord not taking proper care of the rental property. The Tenant testified that they reported water damage issues in the rental property to the Landlord's staff several times over the past year and the Landlord did nothing to address the leaks, which they believe would have prevented the pipe rupture in September 2022. The Tenant submitted a letter from the Landlord dated May 7, 2022, into documentary evidence, which the Tenant submitted demonstrated the Landlord's prior knowledge of the water damage issues.

The Tenant testified when asked, that they had never submitted a written request to repair the rental unit or the rental property to the Landlord, but that they had discussed their concerns with staff.

The Landlord testified that there were no unrepaired water issues in the rental building. The Landlord testified that they attended to all needed repairs and that nothing was ignored. The Landlord also testified that the water damage noted in May 7, 2022, letter was from another occupant allowing water to overflow in a sink in their rental unit and had nothing to do with what the Tenant claimed to be an ongoing water pipe issue. The Landlord testified that the water pipe rupture on September 3, 2022, was not related to this letter.

The Tenant also submitted that the repairs in their rental unit could have been repaired in three to four days and that the Landlord was negligent in stretching out the repair to 58 days. The Tenant submitted that their unit was repaired within three days of the Landlord starting repairs and that the Landlord only started the repairs after the Tenant

served them with written notice that they were going to start the repairs to their rental unit themselves. The Tenant submitted two letters into documentary evidence.

The Landlord testified that they agreed that the repairs to the rental property took 58 days to complete but submitted that this was a major repair, and it took time to arrange for funding to cover the cost of the repair, arrange for contractors, complete the work on the pipe and then start the restorations on the Tenant's rental unit. The Landlord testified that they completed the repairs as soon as possible.

The Landlord also submitted that alternate housing was provided to all the residents affected by this flood, including the Tenant. The Landlord testified that the Tenant was offered a private unit at another one of their facilities, which would have included daily cleaning, and meals made to the Tenants dietary requirements, but the Tenant refused the location.

The Tenant testified that the alternate location was not acceptable to them due to lack of privacy, as well as medical and religious reasons which made the location and facilities unacceptable. The tenant submitted that the only option that they had available to them for housing was a local hotel.

The Landlord submitted that section 25 of the tenancy agreement absolved the Landlord of any responsibility for the Tenants loss, stating the following:

25. Insurance Limitation

The landlord is not responsible for any damage or loss of any of the tenant's property. It is recommended that the tenant arrange insurance coverage for personal possessions.

[Reproduced as written]

The Landlord submitted that all of the items listed in the Tenant's claim would have been covered by tenant insurance and that the Tenant failed to minimize their losses by not getting tenant insurance as recommended.

The Tenant testified that they have tenants insurance now but agreed they did not have tenants insurance at the time of the flood.

Both parties agreed that the Landlord continued to collect the rent for this rental unit, during the time that the unit was uninhabitable, between September 3 to October 30,

2022. The landlord testified that the rent for the rental unit was \$391.00 per month at the time of the flood.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

The Tenant is claiming for compensation in the form of the recovery of their costs and losses suffered due to the Landlord not maintaining the rental property in accordance with the *Act*, in the amount of \$6,718.07. Section 32 of the *Act* sets out the requirements for a landlord to repair and maintain the rental property, and reads as follows:

Landlord and tenant obligations to repair and maintain

- 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.*
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to

the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the testimony of these parties that the rental unit for this tenancy was uninhabitable between September 3, 2022, to October 30, 2022, due to a water pipe rupture that flooded the rental unit.

The Tenant has submitted that the Landlord failed to maintain the rental property and that this failure led to the pipe rupture. The Landlord has submitted that the rental property was properly maintained throughout this tenancy and that the pipe rupture was an isolated issue. I find that the parties, in this case, offered conflicting verbal testimony regarding the maintenance of the rental property, prior to the pipe rupture. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Tenant who has filed for monetary compensation; therefore, it is the Tenant who holds the burden of proof in these proceedings.

I have reviewed the Tenant's documentary evidence, and I find that there is insufficient evidence before me to show that there were repairs required to the rental property, before this pipe rupture, that the Landlord had neglected to complete.

Additionally, after reviewing the totality of the testimony and documentary evidence before me in this case, and in absence of evidence to the contrary, I accept the Landlord's claim that 58 days to complete repairs was reasonable. Consequently, I find that the Tenant has failed to prove a breach of the *Act* by the Landlord in either how the Landlord maintained the property or in length of time for them to effect repairs.

As for the alternate housing offered by the Landlord, I agree with the Tenant, that they had the right to turn down the offered housing, as it did not meet their personal needs.

However, I find that this did not create a responsibility on this Landlord to put the Tenant up in a hotel for the repair period.

Finally, I have reviewed the tenancy agreement signed between these parties and noted that the Landlord clearly advised the Tenant of their responsibility to obtain tenants' insurance for this tenancy. Although tenants insurance was not a mandatory term of this tenancy agreement, I find that section 25 of the tenancy agreement limits the Landlord's liability for the Tenant's losses, in this case, as it put the obligation on the Tenant to by obtaining tenants insurance, that reasonably would have covered them from this type of loss. I find that the Tenant's choice to not maintain the recommended tenants insurance, shows that they did not take reasonable steps to minimize their loss, as required.

For the reasons listed above, I find that the Tenant is not entitled to the amounts requested in their application and I dismiss the Tenant's claim in its entirety.

However, I accept the agreed-upon testimony of these parties that even though the rental unit was uninhabitable between September 3, 2022, to October 30, 2022, and the Tenant did not live in the alternate housing offered by the Landlord, the Landlord continued to collect the rent for this rental unit.

I find that as the Landlord did not house the Tenant between September 3, 2022, to October 30, 2022, they are not entitled to the rent paid for this period. Accordingly, I order the Landlord to return the rent for this rental unit for the period the unit was uninhabitable, in the amount of \$745.58; consisting of 58 days between September 3, 2022, to October 30, 2022, at the per diem rate of \$12.85.

Monthly Rent	\$391.00
Yearly Rent	\$4,692.00
Per Diem	\$12.85
Days Refunded	58
Awarded to Tenant	\$745.58

I grant the Tenant a monetary order in the amount of \$745.58, for the recovery of the rent paid between September 3, 2022, to October 30, 2022 for this tenancy.

Conclusion

I find for the Tenant under sections 67 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$745.58**. The Tenant is provided with this Order in the above terms, 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: February 15, 2023

Residential Tenancy Branch