



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR

Introduction

The Tenant seeks an order pursuant to s. 65 of the *Residential Tenancy Act* (the “Act”) for a rent reduction for repairs, services, or facilities agreed upon but not provided.

A.B. appeared as the Tenant. K.K. and Z.A. appeared as the Landlords.

This matter had been originally scheduled for hearing on October 11, 2022 but was adjourned to February 13, 2023 following the Tenant’s request. The reasons for the adjournment are discussed in my interim reasons.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issue to be Decided

- 1) Is the Tenant entitled to a rent reduction?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in May 2015.
- Rent of \$1,116.50 is currently due on the first day of each month.
- A security deposit of \$550.00 and a pet damage deposit of \$275.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Tenant. I am told that the rental unit is a basement suite within a single detached home.

The Landlords advise that they purchased the property in question sometime in May 2021. I am further advised by the Landlords that they live elsewhere and that they had retained a property management company to look after the tenants and the property. The Landlords have parted ways with property management company, with the Tenant's evidence suggesting this took place in March 2022.

As described by the Tenant, the property in question has a driveway that slopes back toward the basement suite and that there is a perimeter drain that drains rainwater from accumulating against the house at the bottom of the driveway. The Tenant testifies that she notified the property manager on August 15, 2021 that the drain appeared to be clogged. Nothing appears to have been done to remedy this issue. The Tenant indicates that she reported the issue on other occasions in the fall of 2021 when she observed water pooled at the base of the driveway.

The Landlord Z.A. acknowledges that the property manager had been notified regarding the perimeter drain but says that they were told by the property manager that it was not an issue. According to Z.A., their property manager was subpar and was missing in action during the process. The Landlord Z.A. acknowledges that the drain for the driveway appears to have been full of clay and debris that accumulated due to road work on the street in front of the rental unit.

I am told by the Tenant that the issue with the perimeter drain came to a head after significant rain that occurred on November 15, 2021. She says that at approximately

8:00 AM she saw 2 inches of water pool on the driveway and later found 1 inch of water in one of the bedroom closets in the rental unit. The Tenant indicates that she worked all day moving her furniture away from the affected areas and that she missed one day's work to address the flooding in the rental unit. The Tenant further reports that the driveway drain was cleared on November 26, 2021 and the water that had pooled in the driveway then drained away.

I am told by the Tenant that the rental unit's two bedrooms were affected by water ingress and that the Landlord filed an insurance claim to remediate the damage to the property. The Tenant reports mould, flooring removal and replacement, drywall repair, and that the baseboard heaters for the two bedrooms were disconnected for a time during the repairs. The Tenant indicates she continued to live within the rental unit during the repairs, residing in the living room and making use of the kitchen and washroom. The Tenant reports that the repairs were substantially completed on February 3, 2022, though the Landlords' written submissions suggest that the repairs were completed on January 28, 2022.

The Tenant seeks a past rent reduction equivalent to all rent paid for three months (November 2021, December 2021, and January 2022). The Tenant indicates that she was paid \$1,100.00 in rent for November and December 2021 and \$1,116.50 for January 2022. The Tenant argues that the Landlords failed to repair the perimeter drain such that the flooding was the result of inadequate maintenance. The Tenant further argues that the repairs constitute an unreasonable disturbance to her use of the rental unit.

The Landlords argue that they had retained a bad property manager and that they did everything they could to address the flooding and accommodate the Tenant. They further argue that the rainfall in November 2021 was significant and resulted in thousands of insurance claims from other property owners and repairs were slower than they otherwise would have been. The Landlords argue they cannot control acts of nature and responded as quickly and as best they could. The Tenant does acknowledge the Landlords did what they could, though she argues that when she raised the issue of reimbursement of rent with the Landlords it fell on deaf ears.

The Landlords also argue that the Tenant had renter's insurance and could have made a claim to temporarily live in a hotel or elsewhere during the repairs. The Tenant says she was pregnant at the time and had four pets, one of which was of advanced age, such that living elsewhere would have been difficult and more stressful. The Tenant

indicates she looked into the option and that her insurance coverage for alternate accommodations was either \$10,000.00 or \$15,000.00.

I am told the Landlords have paid the Tenant some money for her time in looking after the property and facilitating access to the rental unit to tradespeople, with the Landlords' written submissions indicating this totalled \$250.00.

Analysis

The Tenant seeks an order for a past rent reduction.

Pursuant to s. 65(1)(f) of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

In this instance, there is no dispute regarding the material aspects of the claim. The Tenant reported the perimeter drain clogged in August 2021 and nothing was done by the former property manager. The Landlords acknowledge that the drain was plugged with debris from road construction. Unfortunately for all involved, November 2021 brought historic rainfalls to the region. The parties agree that on November 15, 2021 the rental unit was flooded and that repairs were completed in either late January 2022 or early February 2022.

The issue is whether the flooding is properly characterized as a breach of the Landlords' obligations under the *Act*. I find it telling that by the Landlords own admission their property manager was not up to the task. However, I would note that this does not shift the obligation from the Landlords onto the property managers. The Landlords contracted with the property managers to act as their agents. They are the ones ultimately responsible under the *Act* and are equally responsible for the actions of their agent.

The Landlords argue that the rain was an act of God. I accept that though there was significant rain in November 2021, the reason the flooding in the rental unit was so severe was primarily due to the perimeter drain being clogged. The Landlords acknowledge that it was clogged and that their property manager was asleep at the wheel, so to speak. I am told by the Tenant and accept that the rainwater cleared away

on November 26, 2022 after the perimeter drain was cleared. These points lead me to conclude that had the perimeter drain been properly maintained it is more likely than not that the rental unit would not have flooded or, at the very least, the flooding would have been significantly less severe. I find that the by failing to adequately maintain the perimeter drain, the Landlords were in breach of their obligation under s. 32(1) of the *Act* to maintain and repair the property giving rise to a claim for a rent reduction.

I accept that the rental unit's two bedrooms were largely unusable from November 15, 2021 until about January 31, 2022. The Landlords argue that the Tenant could have relied on her renter's insurance to put her up in a hotel or elsewhere while the repairs were undertaken. Essentially, the Landlords argue the Tenant could have mitigated her losses. What is missed in the Landlords' argument is that the Tenant is not claiming compensation per se but is seeking a reduction in rent for loss of value due to the Landlords breach of the *Act*.

To be clear, the Tenant was obliged to pay rent under the tenancy agreement. I have been given no indication that she did failed to do so over the relevant period. The obligation for tenants to pay rent, as set out under s. 26 of the *Act*, applies regardless of whether a landlord is in breach of the *Act*, Regulations, or the tenancy agreement. In other words, mitigation is not relevant to this claim as the Tenant was obliged to pay rent despite the flooding and the breach of the Landlords' obligation to maintain and repair the property. The Tenant did pay her rent in full, this despite a clear loss in value for the space given the flooding.

The Tenant claims 100% of the rent paid for November 2021, December 2021, and January 2022 totalling \$3,316.50. I find this amount to be too high. Firstly, the flooding took place mid-November 2021 such that it would be inappropriate to reduce rent by 100% for that month. Secondly, the Tenant did still reside within the rental unit and made use of the space to house herself, make use of the kitchen, and make use of the washroom. I accept that this was under circumstances that were significantly less comfortable than they otherwise would have been had the Landlords maintained the perimeter drain. However, there is was still some utility to the Tenant derived from the rental unit such a 100% rent reduction would in inappropriate.

I find that the rent reduction ought to be 60% for December 2021 and January 2022 and 30% for November 2021. This reflects the significant impact and loss of value but also recognizes that the Tenant did derive utility from the rental unit during the flood and the repairs. Given that rent was \$1,100.00 for November and December 2021 and

increased to \$1,116.50 for January 2022, I find that the Tenant is entitled to a past rent reduction totalling \$1,659.90 $((\$1,100.00 \times 0.3) + (\$1,100.00 \times 0.6) + (\$1,116.50 \times 0.6))$.

Conclusion

The Tenant is entitled to a rent reduction under s. 65 of the *Act* totalling \$1,659.90. Pursuant to s. 72(2) of the *Act*, I direct that the Tenant withhold \$829.95 from rent owed to the Landlords on **two occasions** $(\$1,659.90 \div 2)$ in full satisfaction of her past rent reduction claim.

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