Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested a Monetary Order for money owed or compensation for damage for loss under the *Residential Tenancy Act,* the Regulation or the tenancy agreement, an Order that the Tenants be permitted to reduce her rent for repairs, services or facilities and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?

2. Should the Tenants be entitled to reduce rent for services or facilities agreed to but not provided?

3. Should the Tenants recover their filing fee?

Background and Evidence

W.J. testified that the tenancy began September 1, 2015. W.J. stated that although a written residential tenancy agreement existed, it was not provided in evidence. The rental unit is a two bedroom apartment in a 21 story apartment building and monthly rent is payable in the amount of $2,500.00.

The Tenants submitted in evidence a document titled “Case History” wherein they provide details of their claim. For the purposes of conveying the Tenant’s position, I refer to portions of that that document as well as the testimony of the parties.

The claim originates from water overflowing from the unit above on April 7, 2016 at approximately 2:00-3:00 p.m. W.J. testified that he was at home during the “flood” and confirmed that the Landlord’s property management company called a remediation company immediately who were in the rental unit until approximately 1:00 a.m.

In their written submissions the Tenants submit that they were initially informed the remediation would be completed within a reasonable amount of time; namely, one week for the living room and kitchen, and a few more days for the drywall, paint and carpeting in the bedrooms.

W.J. testified that when making the Application, they were given an estimated completion date of July 20, 2016.

W.J. confirmed that the remediation was not completed in a timely fashion, and as a result on June 28, 2016 the Tenants sent the Landlord a detailed message setting out their concerns. In their application for Dispute Resolution filed on July 19, 2016 the Tenants wrote that their concern was that the Landlord appeared to be more focused on “upgrading the apartment and not rectifying the situation in a timely manner”.

At the hearing the Tenants confirmed that the remediation is now complete and was completed some four months after the flood in mid-August 2016.

The Tenants provided in evidence copies of text communication with the Landlord regarding the repairs and their request for compensation. W.J. stated that the Landlord offered the Tenants $500.00 ($250.00 each) in compensation. W.J. confirmed that the Tenants did not accept this sum and instead filed for dispute resolution.

W.J. confirmed they did not have tenant’s insurance. He submitted that as they are not seeking compensation for losses related to their personal property their lack of tenant’s

insurance is not relevant to their claim. W.J. confirmed that they seek compensation for the devaluation of the rental unit, and a rent reduction pursuant to section 65(1).

W.J. stated that he believed the rental unit as approximately 900 square feet and that he believed that approximately 40% of the rental unit was affected by the flood and remediation, including:

- The sink in the en-suite bathroom was removed such that the tenants had to share a bathroom for four months (April 7-July 15).

- The majority of the carpet and underlay were ripped out in both of the bedrooms from April 7 to July 15, 2016.

- The water went under the hardwood and as a result the remediation company removed all the hardwood.

- The remediation equipment, including fans and dehumidifiers were running constantly for approximately the first week

- The Landlords replaced the hardwood with tile as they wished to upgrade the flooring which was delayed as the tile was not readily available.

- The Tenants' bedroom belongings were displaced from June 21, 2016 to July 14, 2016

W.J. stated that he was out of the rental unit for approximately ten to twelve days as a result of the flooding and remediation; he further testified that the other Tenant, M.L. was away for approximately five weeks as there was a good section of time where M.L.'s bed was in the dining room.

Photos submitted by the Tenants confirm the condition of the rental unit during this time as well as the extensive nature and duration of the remediation.

W.J. stated that it felt like the Landlord left it up to them to make sure the remediation work got done as it didn't seem there was anyone overseeing the remediation. He further stated that as a result they were constantly contacted by contractors and trades people to facilitate their work on the remediation.

W.J. testified that the Tenants' claim of $6,350.00 in compensation for the devaluation of the rental unit as a consequence of the flood and the remediation is calculated as follows:

- 50% reduction for a total of $2,500.00 of the rent paid for the first two months (April and May 2016) because of the sharing of the bathroom, holes in the walls and the impact of the remediation;

- 55% reduction for a total of $1,375.00 of the rent paid for June due to "construction phases" which they allege made the rental unit even more unlivable, including:

    - the condition of the rental (as depicted in the photos);

    - the inconvenience and disruption of constantly being contacted by workers when the building manager was away on holidays; and,

    - the inconvenience created when the Tenants had to give one of their keys to the workers.

- 80% reduction for a total of $2,000.00 of the rent paid for July 2016 as a result of the following:

    - M.L.'s bed being in the kitchen/dining room;

    - W.J.'s bed being moved from room to room; and,

    - the Tenants being out of the rental unit for 2-3 weeks of July 2016.

W.J. confirmed that the $6,350.00 figure includes their request for the filing fee.

M.L. also testified on behalf of the Tenants. He confirmed the evidence of W.J. to be true. He also stated that the rental unit was impacted for approximately four months. He stated that at one point in time he stayed with his girlfriend and then with his parents as his room was not livable. He further confirmed that his bed was in the dining room for approximately 5 ½ weeks. He also stated that the workers did not clean up after they completed their tasks leaving it to the Tenants to clean.

M.L. also stated that the building manager was away during the remediation and as a result the Tenants had to provide one of their keys to the workers. M.L. stated that they

were both very busy and this was an issue trying to coordinate their schedules. M.L. also stated they did not have authorization from the strata to make another key. M.L. said that they were contacted by the workers while they were at work and did their best to coordinate but they are not “general contractors” and the constant interruptions were very disruptive.

M.L. confirmed that the remediation was completed at the end of August 2016. He said it was at this time the flooring was completed and the Landlords signed off on the work.

In response to the Tenants’ claim, the Landlord’s counsel submitted that the Landlords’ position is as follows:

- The Tenants did not have insurance to provide them alternate accommodation.
- The premises were in fact livable during the remediation.
- The only inconvenience the Tenants had, aside from moving their furniture around and coordinating with contractors, was the loss of the en-suite bathroom sink.
- The Tenants could have used the other bathroom and the kitchen sink.
- The loss of amenities is not reflective of the amounts they seek.
- The hydro bill fees were paid by the Landlord during this time as a result of the increased costs associated with the remediation equipment.
- The Tenants weren’t actually inconvenienced as they were working quite a bit and away in any case.
- The first time the Landlords were aware the Tenants had to make alternate arrangements for sleeping was when the Landlords received the Tenants evidence in early August 2016.

The Landlord’s spouse, P.S., also testified on behalf of the Landlord. He confirmed that the first time he heard about the water leak was just after it happened on April 7, 2016 at which time he contacted their insurance company and the strata. P.S. said that the insurance company then brought in their contractors. He stated that the first quote was too high and as a result the insurance company obtained a second quote. P.S. further testified that the Landlords had to wait two months for a second quote, after they

“pestered the insurance company constantly to have the work start”. He confirmed he called at least once a week and this went on until May to June 2016 when the work finally began.

P.S. also stated that they were in contact with a flooring company to pick out the new carpet and flooring as soon as possible, but the flooring sat at the vendors from mid-April until it was installed in July or August.

P.S. claimed that the contractors were impacted in their ability to attend to the remediation said they could not do anything because of the Tenants’ furniture. He stated that the contractors wished to have all the furniture moved out of the apartment, but agreed the furniture could be moved from one room to another because the Tenants wished to remain in the unit.

P.S. further testified that they had conversations with the Tenants about them living in the rental unit during all of this. P.S. stated that the Tenants stated they were away a lot and they opted to stay in the rental unit rather than move. P.S. confirmed that these conversations started from when the contractor was assigned in May of 2016.

P.S. said that the spare key was not available, and it was a ‘bit of a mess’ coordinating with the contractors as the strata would not provide a FOB.

In terms of the Tenants’ claim that they were required to communicate with the contractors, P.S. testified that they “did the best that they could long distance”. P.S. stated that they spoke to the contractor once a day, then once a week. He stated that if they were in the community in which the rental unit was located they could have done more, but as they were “long distance” that was the best they could do. He further stated that they were in regular communication with the Tenants about the work that was being done.

P.S. testified that there were also difficulties with the contractors. In particular, he stated that the flooring contractors wouldn’t start until the carpeting was done and from P.S.’ perspective he felt as though the carpeting was not on the list of priorities for the strata. He also confirmed that the carpeting would not start until the drywall was repaired. P.S. further testified that the contractors “didn’t work together” well.

P.S. further stated that they tried to do the best they could to move the renovations along and to compensate the Tenants for the inconvenience by paying the cost of the hydro.

W.J. replied as follows. He stated that they spoke to the Landlords on two separate occasions about their request for a rent reduction as a result of the remediation.

W.J. also stated that while he tried to be out of the rental unit as much as possible, he was there the entire time when the blowers and dehumidifiers were there.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 32 imposes the following obligation on the Landlord:

> **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.

After careful consideration of the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has failed to ensure the rental unit was suitable for occupation by the Tenants between April 7, 2016 and August 2016 and in doing so has breached section 32 of the *Act*.

While I accept that the Landlord took steps to address the flooding in the rental unit in a timely manner, the testimony of the Landlord's spouse, P.S., was that the remediation was delayed for a variety of reasons including the fact that the insurance company requested additional quotes, the lack of effective communication between the various

trades and contractors, the strata's refusal to provide a fob to the contractors, delays due to product availability, and the fact the Landlord was resident in a community a significant distance from the rental unit.

The Landlords' counsel submitted that the Landlords' location was not relevant to the issue as the Landlords made their best efforts to deal with the remediation, and dealt with all stakeholders as best as they could. Based on P.S.' testimony, I find the Landlord's residence to be a significant factor in the remediation delays, and agree with P.S. that the work would have been completed sooner had P.S. and the Landlord been available to oversee the work. A Landlord's choice to reside a significant distance from a rental property should not impact the tenant.

In all the circumstances, I find the value of the rental was significantly impacted by the delayed remediation, causing the Tenants to suffer a loss of use of the majority of the rental unit.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

> "…

> Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.
> …
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
> …
> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.
> …
> In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.
> …

In all the circumstances, I find that the Tenants' right to quiet enjoyment of the rental unit was significantly affected by the prolonged remediation.

I also find the rent reductions claimed by the Tenants for the months affected as set out previously in this my Decision, and totalling $6,250.00 to be reasonable considering the condition of the rental from April to August 2016 and the impact on their ability to enjoy the rental unit.

In their written submissions the Tenants submit that they were initially informed the remediation would be completed within a reasonable amount of time; namely, one week for the living room and kitchen, and a few more days for the drywall, paint and carpeting in the bedrooms. I find that the Tenants' decision to remain in the rental unit was reasonable based on the information they were initially provided. I further accept that they were not aware the remediation would be delayed as it was.

P.S. stated that it was also his belief that the remediation would have occurred in a more timely manner had the Tenants' furniture not been in the rental unit. I find this to be relevant, but a minor factor in comparison to the reasons cited by P.S. Accordingly, I reduce their overall claim by $500.00 to $5,750.00.

As the Tenants have been substantially successful, I grant them recovery of the $100.00 filing fee for a total monetary award in the amount of **$5,850.00.**

Pursuant to section 72(2)(a) the $5,850.00 sum is to credited to the Tenants and taken from the Tenants' monthly rent payments until the Tenants have been fully compensated this amount. Should the tenancy end prior to this amount being credited to them, they may apply for a Monetary Order for any balance remaining.

Conclusion

The Tenants are granted monetary compensation in the amount of $5,850.00. This amount represents a rent reduction in the amount of $5,750.00 for compensation for their loss of quiet enjoyment and devaluation of the rental unit from April 2016 to August 2016 as consequence of the prolonged remediation, as well as recovery of the $100.00 filing fee. The total amount awarded reflects a $500.00 reduction from the amount claimed by the Tenants due to the Tenants belongings remaining in the rental unit during the remediation.

The Tenants are to be credited the sum of $5,850.00 towards any future rent payments.

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: October 11, 2016

Residential Tenancy Branch