



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization that the tenant recover the filing fee of this application from the landlord.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the tenant’s application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the tenant’s application and their respective evidence.

At the outset of the hearing the tenant testified that he has moved out of the rental unit and is no longer seeking an order that the landlord make repairs. The portion of the tenant’s application seeking a repair order is withdrawn.

Issue(s) to be Decided

Is the tenant entitled to a past reduction of monthly rent for reduction in the value of the tenancy agreement?

Is the tenant entitled to recover the filing fee of this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began in March, 2014 and ended on April 1, 2017. The monthly rent at the end of the tenancy was \$1,503.00 payable on the first of the month. The tenant paid a security deposit of \$725.00 at the start of the tenancy and it is still held by the landlord.

On October 21, 2016 water damage occurred to the rental unit, originating in the kitchen. As a result of the water damage the landlord initiated repairs to the rental unit. These repairs included replacing the flooring, the cabinetry and the dishwasher.

The landlord testified that he has compensated the tenant for the period that the value of the tenancy was affected by the water damage and the ongoing repairs. The landlord calculated a reduction in rent based on the area of the rental unit affected. The landlord said the total area of the rental unit is 1,381 sqft. The total rent for the tenancy is calculated based on a value of \$1.05/sqft which provides a monthly rent of \$1,450.00 ($\$1.05/\text{sqft} \times 1,381 \text{ sqft} = \$1,450.00$). The landlord said that less than 10% of the total rental unit was affected by the damage and the area was still usable by the tenant. Because the rental unit could still be utilized, the landlord said that the reduction in value should be calculated at \$0.10/square foot or approximately 10% of the full value. The landlord testified that based on his calculations, he has provided the tenant with a discount on the monthly rent in the amount of \$138.10 for each month of inconvenience for a total of \$766.20 during the tenancy.

The tenant testified that the water damage and subsequent repair work had a greater effect on his ability to use the rental unit than was reflected in the compensation offered by the landlord. The tenant suggested that the total value of the loss is in the range of 50% of the full value. The tenant calculated the total loss to be \$725.00 monthly for five months for an amount of \$3,625.00.

The tenant testified that prior to the water damage, his children would regularly have friends over on weekends. He testified that family dinners were a regular bi-weekly event where extended family would come to the rental unit. The tenant testified that he had set up a small home office in the breakfast nook area where he would work at home. The tenant described the smells and sounds while the restoration work was being done as difficult to deal with. The tenant testified that while the flooring work was being done, the rental unit became cold and uncomfortable. He said that the ambient dust prevented him from working at home, that his children were unable to invite friends over, and that he was unable to host family dinners. The tenant testified that his children spent several nights staying with friends and family because of the chaos in the rental unit. The parties agreed that the rental unit remained habitable throughout the process.

Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the water damage and reclamation work during the last months of the tenancy. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The parties agree that the water damage caused a loss in the value of the tenancy. The parties are unable to agree on the appropriate monetary value of the loss.

The landlord testified that he has provided a rent reduction totalling \$766.20 for the period that the tenant was inconvenienced. The landlord provided calculations based on the total area of the rental unit and by deducting the value of the affected areas. The landlord testified that the damage affected less than 10% of the rental unit.

The tenant testified that the affected areas of the rental unit had greater importance and value towards his ability to enjoy the rental unit. I accept the tenant's testimony that the damage to the rental unit and the subsequent restoration work had a greater impact on the tenant than simply the loss of the square footage. The tenant testified as to the impact the loss has had on his ability to enjoy the rental unit and derive value from the tenancy.

Based on the evidence before me I find that the loss had a significant impact on the tenant and his family in enjoying their daily routine. I find the intended use of the affected area to be relevant in assessing the scope of loss. The loss of use of a kitchen has more value to a tenancy than the loss of the same surface area in a hallway. I find that the tenant has provided sufficient evidence regarding the value the affected areas of the rental unit had on the tenant's ability to enjoy the rental unit. Under the circumstances, I find that a monetary award should reflect this loss and a larger portion of the monthly rent. Nevertheless, I find that the tenant's suggestion of half of the rent, to be excessive. The parties confirmed that the rental unit remained habitable and primarily usable. I find a loss equivalent to 20% of the monthly rent to be appropriate.

I find the landlord's calculations to be a starting point in calculating the loss of value of the tenancy. The landlord testified that he calculated based on a rental amount of \$1,450.00 and a total area of 1,381sqft. The parties agree that the landlord has already provided a rent reduction equivalent to 10% for the duration of the damage and restoration work. Based on the

foregoing, I find that the tenant is entitled to a further rent reduction of an additional 10% and calculate the value as:

$$\$0.10/\text{sqft} \times 1,381\text{sqft} \times 5\text{months (Nov, 2016-March, 2017)} = \$690.50$$

Therefore, I issue a monetary award to the tenant for loss of value of the rental agreement of \$690.50 from November 1, 2016 to April 1, 2017, the end of the tenancy.

As the tenant was partially successful in their application, the tenant is entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$790.50 against the landlord. The tenant is provided with a Monetary 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: April 6, 2017

Residential Tenancy Branch