



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SURFSIDE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC; RR

Introduction

This is the Tenant's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement and a rent reduction.

Both parties attended the Hearing, which took place by teleconference, and gave affirmed testimony. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the Tenant mailed the Notice of Hearing documents to the Landlord, by registered mail, on April 17, 2018. The Landlord acknowledged receipt of the Tenant's documentary evidence from the Tenant's "lawyer". The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to compensation arising from asbestos removal in the rental unit?

Background and Evidence

The Tenant and his advocate gave the following testimony:

On August 7, 2017, a pipe broke in the rental property and the rental unit was flooded. Asbestos was discovered during the clean-up process, which required expert removal. The Tenant's advocate provided oral and written testimony with respect to the Tenant's claim, as follows:

On September 13, 2017, the Landlord's property manager gave the Tenant a letter informing him of scheduled asbestos removal in the rental unit. The letter stated that the Tenant would not have access to the rental unit for four or five days. The Tenant's advocate submitted that the rental unit was not suitable for occupation during the asbestos removal. Therefore, pursuant to the provisions of Section 32 of the Act, the Tenant is requesting a rent refund for the days that the Tenant was without access to the rental unit, calculated as follows:

Monthly rent = \$880.00

Per diem (880 / 30 days) = \$29.33

\$29.33 x 5 days = \$146.67 (rounded down to \$146.00)

The Tenant provided a copy of a hotel bill for the period during which he did not have access; however, the Tenant is not seeking to recover that cost.

The Tenant did not have access to a shower from September 5 to September 28, 2017. Therefore, pursuant to the provisions of Section 27 of the Act, the Tenant is seeking compensation in the equivalent of 30% for the month of September, 2017, in the amount of \$264.00.

The Tenant also seeks compensation under Section 28 of the Act for loss of quiet enjoyment of the rental unit. The Tenant submitted that the rental unit was not completely repaired until February 14, 2018. He submitted that there was excessive noise and general disarray. The Tenant seeks a rent reduction of 10% for the months of August, 2017 through to February, 2018, for a total of \$484.00.

The Tenant submitted that restoration equipment used in the rental unit increased the amount of his hydro bill by \$23.00. He seeks to recover that additional cost.

The Tenant's total claim is \$917.00.

The Landlord gave the following testimony:

The Landlord did not dispute the Tenant's testimony. He stated that he empathized with the Tenant; however, he stated that he had little control over the speed of the process once his insurance company took over the remediation. The Landlord stated that the Tenant failed to use his own insurance for compensation. The Landlord testified that he spoke with the Tenant and advised him that his deductible could be reclaimed through subrogation under the Landlord's insurance provider. He stated that he understood that

the deductible could be recovered from the Landlord's insurance, as well as any future increase in premiums. The Landlord testified that the Tenant refused to consider using his own insurance and therefore there was not opportunity for discussions to take place between the two insurance providers.

The Landlord questioned the point of having insurance if it was not used for the purposes it is intended. The Landlord stated that at least some of the Tenant's issues could have been addressed but that the Landlord was not given the opportunity because the Tenant refused to enter into discussions. The Landlord submitted that the Tenant therefore failed to mitigate his loss.

The Tenant gave the following reply:

The Tenant's advocate submitted that their position is that the Tenant is seeking damages for other than damage to his possessions and therefore his insurance would not cover his claim. The Tenant's advocate submitted that the Tenant could have claimed for the cost of the hotel, in the amount of \$600.00, but that his deductible was \$500.00, and that it would go up to \$2,000.00 if he made a claim.

The Tenant stated that he does not wish to go through his insurance, but acknowledged that he has not talked to his insurer about subrogation.

Analysis

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Tenant did not provide documentary evidence (for example, a copy of his insurance policy or a letter from his insurer) which would indicate what was covered under his policy, or what the consequence of making a claim would be with respect to a future deductible.

The Tenant acknowledged that he did not enter into discussions to determine what might be subrogated, or covered, under his and his Landlord's insurance policies. Therefore, I find that the Tenant did not do whatever was reasonable to minimize his damage or loss.

Conclusion

The Tenant's Application is dismissed.

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: June 14, 2018

Residential Tenancy Branch