



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's agent (the landlord) confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on July 1, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written and photographic evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the hearing, I confirmed that the landlord realized from the tenant's dispute resolution hearing package, requesting the issuance of a monetary Order in the amount of \$6,235.26 and the recovery of the tenant's filing fee, that the tenant was seeking these monetary Orders. The landlord said that they fully understood the nature of the tenant's claim and had responded with written evidence disputing that claim.

Issues(s) to be Decided

Is the tenant landlord entitled to a monetary award for losses and money owing as a result of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The tenant said that they moved into this rental unit in 2008. The landlord said that they had been providing rental management services to the owner of this 24-unit rental building since 2014. The tenant's monthly rent is currently set at \$800.00, payable in advance on the first of each month, plus parking. The landlord continues to hold one-half of the monthly rent the tenant was paying in 2008 as a security deposit. The parties confirmed that the tenant has continued paying monthly rent throughout the course of this tenancy.

The tenant's application for a monetary award sought the recovery of accommodation expenses the tenant had incurred from November 15, 2017 until February 9, 2018, a period when the tenant was staying in a local hotel while the rental suite was being repaired. The tenant entered into written evidence copies of receipts for the payment of \$5,426.18 for the period prior to February 6, 2018 and \$809.00 for accommodation from February 6 to 9, 2018. The tenant's legal counsel stated that the total accommodation costs at the hotel were \$15,170.25, and the above amounts were the remaining amounts not included in payments made by the tenant's insurance company of \$9,460.00. The tenant entered into written evidence copies of receipts and correspondence with the tenant's insurer stating that the tenant's eligibility for payments under the tenant's insurance was limited to \$9,460.00.

The tenant's legal counsel advised that the amount claimed by the tenant from the landlord was limited to the period from November 15, 2017 until February 9, 2018, a period when the tenant was unable to reside in the rental unit due to the landlord's repairs of the rental unit flowing from the second of three leaking incidents. The parties agreed that the second leaking incident resulted from a "pinhole leak" in a pipe in the rental unit above the tenant's rental unit.

The tenant's legal counsel and the tenant gave undisputed sworn testimony that no portion of the payments claimed or included in the \$6,235.26 monetary claim were for anything other than hotel accommodation costs. The tenant also provided a detailed

chronology outlining the sequence of events and the various work undertaken on the rental unit. The tenant's legal counsel said that the tenant tried his very best to return to the rental unit as soon as it was ready for occupancy, and kept a frequent watch on the progress of the work being undertaken by the landlord.

At the hearing, the landlord referenced a May 9, 2018 letter to the tenant in which the landlord advised the tenant that the landlord was not responsible for that portion of the tenant's hotel bills that were not covered by the tenant's insurance policy. In the letter, the landlord also advised that there was an appeal process with the insurance coverage, which the tenant could pursue. This letter reads in part as follows:

...The landlord has been professionally advised that redress for costs, if any, is from your insurance policy at (WI Group - the tenant's insurer), and not the landlord, as this is an insurance issue...

The landlord did not produce any witnesses to support the above assertion, but testified that they had spoken to a number of knowledgeable individuals who shared that view.

As there were no dates on the photographic evidence submitted by the tenant, the tenant reviewed the photographs and maintained that a number of photographs at pages 32, 33, 34 and 35 of the tenant's evidence package were taken at the end of January 2018, when the landlord's restoration company and claims office first asserted that the premises were ready for the tenant to return to live in the rental unit.

At the hearing, the landlord noted that the tenant's own written evidence (i.e., page 3 of the tenant's evidence package) indicated that the problem with mould under the kitchen cabinets was not discovered until February 17, 2018, and after the tenant had moved back into the rental unit on February 10, 2018. The landlord said that this was at odds with the tenant's sworn testimony regarding the timing of the photographs at pages 32, 33, 34 and 35. The tenant's written chronology also notes that additional mould was located on a different portion of the living room carpet on February 10, 2018, which was again in conflict with the sworn testimony of the parties with respect to the tenant's January 31, 2018 hesitation at moving back into the rental unit until the moisture coming from the perimeter walls was discovered.

The landlord testified that the landlord's insurer, as it turned out the same company as that of the tenant, paid for the repairs to the rental unit save for the \$5,000.00 deductible limit on the landlord's insurance. The landlord did not dispute the tenant's assertion that

the rental unit needed to be vacated on or about November 15, 2017, while the repairs to the pinhole leak were undertaken.

The landlord gave sworn testimony and written evidence that the rental unit was fit for habitation by January 31, 2018, at which time the project manager of the restoration company that conducted the repairs and a claims official met with the tenant. An email from the claims official at 9:43 a.m. that morning stated that the restoration company representative did not believe that there was any significant mould remaining in the rental unit of any kind. In that email, the claims official observed that the restoration company was going to undertake some additional work, which could "at least allow (the tenant) to move back in." The landlord maintained that the tenant insisted on having the carpets replaced because of moisture that was entering the rental unit from the deck, a deck allegedly installed by the tenant without the landlord's express permission some years before.

The landlord's written evidence also included a subsequent email sent at 10:37 a.m. that same morning. In that email, the restoration company's project manager advised that they had just returned from the rental unit where they had discovered two additional sources of elevated moisture and that an additional inspection of the perimeter of the foundation would be necessary to look for cracks in the perimeter wall.

Analysis

I should first state that I attach very little weight to the landlord's unsubstantiated claim that the tenant's application for a monetary award was "an insurance issue" and not one that could form the basis for an application for the recovery of losses arising out of a residential tenancy pursuant to the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord was responsible for the losses incurred by the tenant. Section 7(1) of the *Act* establishes that a tenant who does not

comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

As the tenant's legal counsel correctly noted at the hearing, section 32(1) of the *Act* establishes the landlord's obligation to repair and maintain a rental unit:

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.

There is undisputed evidence that the tenant could not remain living in the rental unit from the period from at least November 15, 2017 until January 31, 2018. In this regard, I note that the tenant gave undisputed sworn testimony that for the week prior to November 15, 2017, they lived with pots and pans distributed in the rental unit before the landlord was able to determine the source of the leak and establish that the premises needed to be vacated in order to undertake the repairs.

As was noted above, there was conflicting evidence from the parties as to whether the rental unit was habitable on January 31, 2018, as was claimed by the landlord. While the landlord raised legitimate concerns about the extent to which the tenant's sworn testimony regarding the timing of the tenant's photographic evidence matched with the tenant's own chronology of events, I also find that the landlord's written evidence was also not definitive. The one line cited by the landlord from the claims official's January 31, 2018 cannot be read in isolation from the additional statements in that email, which I find clearly alluded to additional work that needed to be done to determine the source of ongoing moisture entering the rental unit that was evident at that time. Later that same day, the project manager for the restoration company reinspected the premises, noting in his subsequent email that still more work would need to be done to identify the source of the ongoing moisture entering the rental unit, perhaps through the perimeter wall. On this basis, I find that the claims manager's email of a second-hand report of information that the project manager "did not believe that there is any significant mould of any kind" is at odds with the rest of that email, the project manager's own subsequent email and indeed the reality that significant mould was discovered in the rental unit shortly after the tenant did actually return to live there. Even if the project manager who did not

attend this hearing to corroborate the statements attributed to them did believe on January 31, 2018 that there was no significant mould of any kind in the rental unit, 18 days later significant mould was found in the kitchen that required considerable additional repair work. I do not find it unreasonable that the tenant was hesitant to return to the rental unit while ongoing moisture problems in the rental unit had not yet been addressed in their entirety.

Under these circumstances, I find on a balance of probabilities that the tenant had sufficient reason to question the extent to which the rental unit was habitable at the January 31, 2018 inspection with the claims official and the project manager. For these reasons, I find that the tenant is entitled to a monetary award pursuant to sections 7(1) and 67 of the *Act* for losses the tenant experienced during the course of this tenancy in the form of the difference between the tenant's hotel bills from November 15, 2017 until February 9, 2018. I allow the tenant's application for a monetary award of \$6,235.26, the difference between what they paid the hotel for accommodation and what they received in compensation from their insurance company.

In coming to this finding, I have also accepted that the tenant has mitigated the landlord's exposure to the tenant's losses to the extent required by section 7(2) of the *Act*. In this regard, the tenant stayed in the rental unit as long as possible at the beginning of this repair process, examined but found unfeasible any reasonable alternatives to staying in a nearby hotel, kept checking on an ongoing basis on the status of the repairs, and returned to the rental unit only when their ability to continue paying for hotel rooms had been exhausted. The tenant also purchased tenant's insurance beforehand and collected a sizeable payment from their insurer to mitigate losses that otherwise may very well have become the responsibility of the landlord or their insurer.

Since the tenant has been successful in this application, I allow the tenant to recover their \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour, which allows the tenant to recover their losses incurred in residing in a hotel while the landlord repaired the tenant's rental unit to the extent that the tenant could return to continue with this tenancy and to recover their filing fee.

Item	Amount
Monetary Award for Hotel Costs while Rental Unit being Repaired	\$6,235.26
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$6,335.26

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 08, 2018

Residential Tenancy Branch