



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, RR

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants testified that the tenancy started in September 2018. The rent was \$1,800.00 per month and the tenant paid \$900.00 for a security deposit. The rental unit was an apartment in a multi-unit unit building.

The tenants testified that a plumbing incident occurred on December 24, 2018. The tenant testified that water backed up in the kitchen sink. The tenants testified that hired a plumber to fix the problem before the sink overflowed. The tenants provided an email dated December 27, 2018 which notified the landlord of the plumbing incident.

The tenants testified that the kitchen sink became plugged and it backed up again on January 15, 2019. The tenants provided an email dated January 15, 2019 which notified the landlord that the sink was backing up again. The also provided an email dated January 15, 2019 in which the tenants suggested that the landlord should install a backflow device to prevent further backflow flooding.

The tenants testified that he went on vacation February 28, 2019 and when they returned on March 11, 2019 they found that the rental unit had been flooded. The tenants testified that the flooding caused extensive damage to the rental unit and their personal possessions. The tenants testified that their personal property losses were in excess of \$20,000.00.

The tenants made an insurance claim for the damage to their personal property satisfactorily covered the tenants' loss. However, the tenants had to pay a \$1,000.00 insurance deductible.

The tenants testified that they were very inconvenienced while the rental unit was being remediated. The tenants testified that they were left without access to water in their rental unit for 57 days while the repairs were being made. The tenants testified that the kitchen sink and the dishwasher were not functional during that time. The tenants testified that they needed to wash their dished in their bathtub during this time. In addition, the tenants testified that the carpets had a foul smell from being saturated in water. The tenants provided multiple photographs showing the flooding and water damage to the flooring and walls.

The tenants presented an email from the building strata corporation dated March 12, 2019 wherein the strata association acknowledged that the flooding was caused by a building plumbing issue which was not caused by the tenant.

The tenants requested a 50% rent reduction for the two months wherein the rental unit was being remediated.

The landlord acknowledged that the rental unit was flooded. In addition, the landlord acknowledged that the tenants did not commit any acts or omission cause the flood. However, the landlord argued that the building strata corporation was responsible for the tenants' losses not the landlord.

The landlord produced a copy of minutes from a state council meeting on March 20, 2019 wherein the strata corporation determined that the plumbing incident was caused by a faulty garbage disposal unit in the apartment above the tenant's rental unit.

Analysis

The tenants are seeking monetary compensation for a reduction of rent regarding the loss of the use rental property caused by the flood; reimbursement of their \$1,000.00 personal property insurance deductible; and reimbursement of their filing fee. I will address each of the claims separately.

i. Claim for compensation for loss of use of the rental unit

The landlord has claimed monetary compensation for loss of use of the rental unit while the flood damage was being remediated.

The Act mandates minimal standards for rental units. Section 28(b) of the Act states that the tenants are entitled to quiet enjoyment of the rental unit, including "...freedom from unreasonable disturbance." Furthermore, section 32(1) of the Act states that the "...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..."

I find that the landlord's remediation efforts constituted a violation of the tenants' right to quiet enjoyment pursuant to section 28(b). Furthermore, I find that the deprivation of access to the kitchen violated section 32(1) of the *Act*.

Section 65 of the *Act* allows me to issue a monetary award to compensate the tenants with a rent reduction if I determine that there has been non-compliance with the *Act*, regulations or a tenancy agreement. As stated above, I find that the landlord has breached sections 28(b) and 32(1) by depriving the tenants of the full use and enjoyment of the rental unit was being remediated.

The tenants have requested compensation in amount of a rent reduction of 50% of rent for the period of 57 days in which the rental unit was being remediated. I find that the tenants' loss of use the rental unit was very significant. I find that being deprived of a kitchen sink and dishwasher creates a substantial reduction in the value of the rental in excess of the 50% rent reduction requested by the tenants. However, since the tenants have only requested a rent reduction of 50%, I grant that request.

Accordingly, I grant the tenants a rent reduction of \$1,800.00 (50% of two months of rent at \$1,800.00 per month.) The tenant is granted an award of \$1,800.00.

ii. Claim for reimbursement of the personal property insurance deposit

Section 67 of the Act states that an applicant can obtain a monetary order for compensation "...if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement." Pursuant to *Residential Tenancy Branch Rules of Procedure*, Rule 6.6 the applicant, in this case the tenants, have the onus of proof to prove their case on a balance of probabilities. This means that the tenants have to prove that, more likely than not, they suffered damage or loss as a result of the landlord not complying with this Act, the regulations or a tenancy agreement.

In this matter, I find that the tenants clearly suffered a loss. I find that their personal property was damaged and the tenants had to pay a \$1,000.00 insurance deductible to recover their losses. However, the tenants have not provided any evidence that their loss was caused by the landlord breaching the Act, the regulations or the tenancy agreement. Since the tenants have the onus of proving their claim, in the absence of such evidence, I dismiss the tenants' application for reimbursement of their insurance deductible against the landlord pursuant to the Act. However, this decision is not intended to be determinative of the tenants' right to claim reimbursement of their insurance deductible in other legal forums outside of the Residential Tenancy Branch.

iii. Reimbursement of filing fee

Since the tenants were partially successful in their application, I grant their request for reimbursement of the filing fee.

Accordingly, the tenants are entitled to an award of \$1,900.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
Compensation for loss of use of rental unit	\$1,800.00
Filing fee	\$100.00
Total	\$1,900.00

To satisfy this award, the tenants may deduct the sum of \$1,900.00 from future rent obligations.

Conclusion

The tenants are granted a monetary award of \$1,900.00. To satisfy this award, the tenants may deduct the sum of \$1,900.00 from future rent obligations.

The tenants' application for reimbursement of their insurance deductible against the landlord pursuant to the *Act* 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: August 14, 2019

Residential Tenancy Branch