



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEICOR PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 25, 2020 (the "Application"). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenant also sought reimbursement for the filing fee.

The Tenant appeared at the hearing. The Agents for the Landlord, H.T. and L.T., appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

At the hearing, the Tenant advised that she is not seeking an order that the Landlord comply with the Act, regulation and/or the tenancy agreement but is seeking compensation. The Tenant had not submitted a Monetary Order Worksheet or provided one to the Landlord. The Tenant advised that she is seeking \$2,200.00 in compensation as follows:

- \$35.00 x 45 days for a total of \$1,575.00 for loss of use of the rental unit;
- \$100.00 for the filing fee;
- \$196.61 for hydro costs;
- \$21.41 for the cost of mailing letters to the Landlord to resolve the issue; and
- \$307.00 for costs associated with living with her family while out of the rental unit.

Given the Tenant had not applied for compensation and had not set out the compensation sought in the Application, I asked the Agents if they were prepared to deal with the above issues at the hearing. H.T. confirmed the Agents were prepared to deal with the above issues. Given this, I heard the Tenant's application for compensation as set out above.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and all documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2016 and is a month-to-month tenancy. The parties agreed rent is currently \$1,049.00 per month. Rent is due on or before the first day of each month. The Tenant paid a \$475.00 security deposit and \$475.00 pet damage deposit.

\$35.00 x 45 days for a total of \$1,575.00 for loss of use of the rental unit

The Tenant testified as follows. The rental unit flooded on November 12, 2019. She could not live in the rental unit while it was being restored. She was able to move back into the rental unit December 24, 2019; however, the toilet was not fixed until December 27, 2019. She could not live in the rental unit for 45 days. She still paid rent. The rent works out to be \$35.00 per day. She is seeking compensation in the amount of \$35.00 per day for the 45 days she could not live in the rental unit.

The Tenant further testified as follows. She was told that a mechanism in the toilet that controls the water level broke and so the toilet continued to fill with water and flooded the rental unit. She was not in the rental unit when this occurred, and her neighbours contacted her to tell her the rental unit was flooding. When she returned to the rental unit, an agent for the Landlord was already there.

The Tenant further testified as follows. The Landlord did not provide a timeframe for the restoration or when the restoration company was going to start work. The Landlord did not communicate with her during the process and she had to contact the Landlord about

when she could return to the rental unit. She had to find alternate housing. The breach by the Landlord was that she did not have use of the rental unit for 45 days. Further, the Landlord did not make sufficient efforts to get the restoration done so she could move back into the rental unit within a reasonable timeframe.

The Tenant submitted photos and videos showing the state of the rental unit during the restoration. The Tenant submitted text messages between her and L.T. in relation to the restoration and rental unit.

H.T. testified as follows. The Landlord was at the mercy of their insurance company. The Landlord had to email their insurance company multiple times to get an update on the status of repairs. The Landlord proceeded with restoration as soon as they were given the green light to do so. The Landlord did everything they could to get the repairs done. The Landlord did not neglect their duties.

H.T. further testified as follows. The Tenant should have had insurance as required by the tenancy agreement. It is not the Landlord's responsibility to reimburse the Tenant for rent because insurance would have covered this.

The tenancy agreement states:

The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's property. The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this Agreement and this responsibility will survive the ending of this Agreement.

H.T. acknowledged that the issue with the toilet that caused the flood was not the Tenant's fault. H.T. agreed it was natural deterioration of the toilet that caused the issue. H.T. submitted that it was not the Landlord's failure to maintain or repair that caused the issue.

L.T. testified that the issue with the toilet was nobody's fault.

The Landlord submitted correspondence about the restoration in the rental unit.

In reply, the Tenant submitted that the term in the tenancy agreement referred to by H.T. relates to damage to belongings and not to loss of use of the rental unit.

\$196.61 for hydro costs

H.T. advised that \$131.20 was being sent to the Tenant within the week for hydro costs. The Tenant advised that she is still seeking the full \$196.61. The parties then agreed the Landlord would compensate the Tenant \$165.00 for hydro costs.

\$21.41 for the cost of mailing letters to the Landlord to resolve the issue

The Tenant sought compensation for the cost of mailing two letters to the Landlord by registered mail to resolve this matter.

H.T. submitted that the Landlord should not have to pay these costs because the Tenant did not need to use registered mail to send the letters.

\$307.00 for costs associated with living with her family while out of the rental unit

The Tenant sought \$307.00 in compensation for money she contributed to her family while staying with them for the 45 days she could not live at the rental unit. The Tenant submitted that this amount also includes the cost of cable and internet because she did not have access to these for the 45 days she could not live at the rental unit. The Tenant testified that the remainder of the amount sought covers costs such as contributing to grocery and gas bills while staying with family. The Tenant also submitted that she is seeking compensation for having to find housing last minute because she came home to the rental unit torn up and was not aware work was going to start that day.

H.T. took the position that the Landlord is not responsible for these costs because the Tenant should have had insurance which would have covered these costs.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

\$35.00 x 45 days for a total of \$1,575.00 for loss of use of the rental unit

A tenant's right to quiet enjoyment is protected by section 28 of the *Act* which states:

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...
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA... In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations. (emphasis added)

I accept that there was a flood in the rental unit November 12, 2019 due to an issue with the toilet as the parties agreed on this. I also accept that neither the issue with the toilet nor the flood were the fault of the Landlord or the Tenant as the parties agreed on this.

I accept that the Tenant could not live in the rental unit while it was being restored due to the flood. I accept the Tenant's testimony about this. The Tenant's testimony is supported by the photos and videos in evidence. The Landlord did not dispute this or take the position that the Tenant could have lived in the rental unit during restoration. I

accept based on the Tenant's testimony that she could not live in the rental unit for 45 days. Again, the Landlord did not dispute this.

Based on Policy Guideline 6, I find the Tenant was unable to use the rental unit for 45 days and therefore experienced a breach of her right to quiet enjoyment which includes use of the rental unit. I find the interference substantial given the Tenant could not live in the rental unit for 45 days and had to find alternate accommodation. The loss of use was more than a temporary discomfort or inconvenience as the Tenant lost the use of the entire rental unit as she was not able to live in the rental unit during the restorations. Further, I find 45 days to be a lengthy period of time for the Tenant to be out of her home, separated from many of her belongings and living in alternate accommodation.

I accept H.T.'s testimony that the Landlord took steps to address the issue as I am satisfied the correspondence in evidence supports this. However, the Landlord has an obligation to ensure the Tenant's right to quiet enjoyment is protected including the Tenant's right to possession and use of the rental unit. It was not the actions or neglect of the Tenant that caused the loss of use of the rental unit. The Tenant could not live in the rental unit for 45 days through no fault of her own. As stated in Policy Guideline 6, the Landlord can still be required to compensate the Tenant for loss of use of the rental unit even if the Landlord made reasonable efforts to minimize the disruption to the Tenant in restoring the rental unit. I am satisfied the Landlord is responsible for compensating the Tenant here given the Tenant could not live in the rental unit for 45 days, which is a lengthy period of time.

I am satisfied the Tenant's rights under section 28 of the *Act* were breached. I am satisfied the Tenant experienced loss as a result of the breach. The Tenant seeks compensation of \$35.00 per day for 45 days based on the daily rent rate and number of days she could not live in the rental unit but still paid rent. Given the Tenant could not live in the rental unit for 45 days, and had to find alternate accommodation, I am satisfied it is fair to calculate the loss based on the daily rent rate.

In relation to mitigation, I do not find that there was anything the Tenant could have or should have done to speed up the restoration process. The process was not in the control of the Tenant. The Landlord was aware of the flood immediately. This is not a situation where the Tenant could have taken steps to mitigate the loss claimed.

H.T. submitted that the Tenant should have had insurance as required by the tenancy agreement as it would have covered the loss claimed. First, I do not find that term 42 in the tenancy agreement addresses this specific claim as it relates to damage or loss to

the Tenant's property. Second, in the absence of further evidence about what an insurance policy would have and would not have covered, I am not satisfied it would have covered the specific compensation sought. Third, the Landlord's obligation to compensate the Tenant arises from the *Act* and the Landlord's obligation to ensure the Tenant's right to quiet enjoyment. Pursuant to section 5 of the *Act*, no term in the tenancy agreement can change this obligation. In the circumstances, I am not satisfied the Tenant's lack of insurance affects this specific claim.

Given the above, I am satisfied the Tenant is entitled to the compensation sought and award the Tenant the \$1,575.00 sought.

\$196.61 for hydro costs

The parties agreed the Landlord would compensate the Tenant \$165.00 for the hydro costs. Therefore, the Tenant is awarded \$165.00 for this issue. The payment of \$131.20 had not been received at the time of the hearing. Therefore, I have included the full \$165.00 in the monetary order issued. However, if the Tenant has received the \$131.20, the Tenant can only enforce the monetary order for the remaining \$33.80.

\$21.41 for the cost of mailing letters to the Landlord to resolve the issue

I decline to award the Tenant compensation for the cost of sending registered mail letters to the Landlord for two reasons. First, landlords and tenants will need to communicate during a tenancy. This is part of the process and landlord-tenant relationship. I do not find that parties are entitled to compensation for the costs associated with these communications. Secondly, the Tenant had other options to get a letter to the Landlord such as through regular mail or by dropping it off to the Landlord. The Tenant was entitled to choose to use registered mail; however, the Landlord is not responsible for compensating the Tenant for this choice.

\$307.00 for costs associated with living with her family while out of the rental unit

I decline to order compensation in relation to monies the Tenant contributed to her family's bills because documentary evidence of what the Tenant contributed to, and the amount contributed, has not been submitted. I find the Tenant has failed to prove the damage or loss and the amount or value of the damage or loss.

I am not satisfied the Tenant is entitled to compensation for the cost of cable or internet. These are services the Tenant chooses to pay for, not services the Landlord has agreed

to provide as part of the tenancy agreement. Therefore, I am not satisfied the Landlord is responsible for compensating the Tenant when the Tenant cannot access these services as I find the Landlord's responsibility relates to the rental unit and services provided as part of the tenancy agreement.

In relation to the compensation sought for having to find alternate housing, I am satisfied the \$35.00 per day for the 45 days the Tenant was not able to live in the rental unit fully compensates the Tenant for the loss experienced and decline to award the Tenant a further amount for this. I find this in part because the flood was not the fault of the Landlord and the breach here is loss of use of the rental unit. I also find that this was an urgent situation and find it reasonable that things happened quickly at first to address the flood and damage to the rental unit. I acknowledge the inconvenience to the Tenant but find the compensation awarded addresses the loss.

\$100.00 for the filing fee

Given the Tenant was partially successful in the Application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

Pursuant to section 67 of the *Act*, the Tenant is awarded the following compensation:

- \$1,575.00 for loss of use of the rental unit;
- \$100.00 for the filing fee; and
- \$165.00 for hydro costs.

The Tenant is entitled to \$1,840.00 and is issued a Monetary Order for this amount.

Conclusion

The Tenant is entitled to \$1,840.00 and is issued a Monetary Order for this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 17, 2020

Residential Tenancy Branch