Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and an agent for the Landlord (the "Agent"), all of whom provided affirmed testimony. The Agent acknowledged service of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

The Tenants acknowledged receipt of the Landlord's documentary evidence and raised no concerns regarding its acceptance or consideration. As a result, I have considered all of the documentary evidence before me from the Landlord in rendering this decision.

Although the Agent acknowledged receipt of the Tenants' documentary evidence, they stated that they received 8 pages of this documentary evidence late, as it was not personally served on them until July 6, 2020. The Agent argued that this late evidence

should therefore be excluded as it was not served on them at least 14 days prior to the hearing, as required by the Rules of Procedure, and they have not had time to review or formulate a response to it.

The Tenants stated that the late documentary evidence is simply a summary of their position and oral submissions and a response to the Landlords documentary evidence received by email on July 1, 2020, and by registered mail on July 3, 2020.

Having reviewed the late documents in question, I find that they are best characterised as written versions of the Tenants general position and a timeline of events. As a result, I consider them to be submissions rather than documentary evidence. As parties are entitled to make oral submissions at the hearing, and the Tenants would therefore be entitled to read these written submissions during the hearing, regardless of whether or not they were before me in writing, I therefore find that there is no prejudice or unfairness to the Landlord in accepting them for consideration. Based on the above, I therefore accepted all of the documentary evidence before me from the Tenants, including the late written submission, for consideration in this matter.

Issue(s) to be Decided

Are the Tenants entitled to compensation for monetary loss or other money owed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that leaks occurred in the ceiling of one of the bedrooms of the rental unit in February of 2019 and January of 2020, as a result of water ingress from the roof. However, the parties disagreed about the severity of the leaks, whether the Landlord acted swiftly and responsibly in dealing with the leaks, and the amount of compensation due to the Tenants as a result of the leaks.

The Tenants stated that the first leak occurred on the morning of February 13, 2019, when they were awakened by the crying of their infant, who was covered with ice-cold water leaking from the ceiling into the crib. The Tenants stated that in addition to leaking into the crib, water was leaking from several areas in the ceiling of their child’s bedroom. The Tenants stated that they put out buckets and pans to catch the water and contacted the Landlord’s office immediately. Although they had difficulty convincing an agent for the Landlord of the seriousness of the matter, ultimately a maintenance person was

dispatched to the rental unit to clear a build up of ice on the roof suspected of causing the leak. The Tenants stated that they were given a dehumidifier by the Landlord and that roofers also attended on that date to complete a temporary patch but explained to them that a permanent fix would be required when the weather was better. The Tenants stated that the dehumidifier was picked up a few days later and that was the last they heard from the Landlord about the issue.

The Tenants stated that they assumed the Landlord had completed the permanent roof fix, as it would not have required entry to their rental unit, until another leak occurred in the same area of the rental unit on January 13, 2020, again as a result of heavy snowfall and ice. The Tenants stated that although the leak was in the same area of the rental unit, it was much more severe than the original leak, covering half of their son's room as well as the bathroom. The Tenants stated that they put out buckets and pans to catch the water and contacted the Landlord's office immediately. Again they stated that they had difficulty convincing agents for the Landlord of the severity of the issue but eventually the agents for the Landlord sent maintenance personnel to their rental unit, who advised them that a roofer would be needed immediately.

The Tenants stated that between January 13, 2020, and January 22, 2020, when the leak was finally repaired, several contractors, agents for the Landlord and maintenance personnel attended the rental unit, but very little was done, as none of them were roofers. The Tenants stated that they each lost wages from work as they were required to stay home to monitor the leak and empty the buckets as they were initially filling every 30 minutes, and even after the leak slowed and they were provided with a garbage can to catch water, the Landlord's agents could not guarantee that someone could check on their apartment as often as necessary during the day to monitor the situation.

The Tenants acknowledged that they were offered a $400.00 hotel allowance and a rent credit of $350.00 but stated that these were declined, as a suitable local hotel with availability could not be located, it was too inconvenient to go to a hotel with an infant, and the financial loss suffered by them was far more than the $350.00 offered. The Tenants stated that they believe 9 days to repair the leak was simply unreasonable and that the Landlord was negligent in not having the original roof leak properly repaired. As a result, they sought $1,000.00 in compensation for lost wages, loss of use and loss of quiet enjoyment. They also sought recovery of the $100.00 filing fee.

Although the Agent acknowledged that several leaks had occurred in the rental unit, they questioned the assertion that the leaks had the same cause and stated that

although the entire roof had not been replaced after the first leak, it is the Landlord's belief that the roof was properly repaired when roofers attended on February 13, 2029, to repair the first leak. The Agent denied that the Landlord had failed to take reasonable action in relation to the leak stating that the delays in obtaining a roofer were related to the very inclement weather occurring at the time, not the Landlord's negligence, and that the roofers approved by the Landlord were not available due to the weather. Despite the weather, the Agent stated that they were still able to send several contractors, agents, and maintenance personnel to the rental unit to assesses the leak, clear snow, place sandbags on the roof, and to provide things such as a garbage can, hose, and some tarps.

When asked how many roofing companies had been contacted between January 13, 2020 – January 22, 2020, the Agent stated that the Landlord has approved contractors that they work with, both of whom were contacted. The Agent stated that although the approved roofing company was unavailable until the January 22, 2020, due to the weather, the general contractor had attended on several occasions at their request. The Agent also stated that when they attended the rental unit on January 21, 2020, the interior ceiling appeared to them to be dry, and as a result, they believe that the clearing of ice and the placing of sandbags on January 13, 2020, had significantly reduced the severity of the leak.

The Agent denied that staff were not available to check regularly on the rental unit in the Tenants' absence but did not provide specific details regarding how often they could have attended. As a result, the Agent stated that the Tenants should not be entitled to compensation for lost wages as it was not necessary for them to stay home from work. Further to this, the Agent stated that the Tenants were required to carry insurance under their tenancy agreement, and therefore should be seeking compensation through their own insurance provider for losses suffered

Despite the above, the Agent stated that the Landlord is still offering a $350.00 rent credit, which represents ¼ of a months rent, as only half of the apartment was affected by the leak and for less than 2 weeks, as well as professional carpet cleaning.

The Tenants denied that the leak was substantially reduced as a result of ice clearing and sandbag placement on January 13, 2020. They also stated that although they have suffered damage to their possessions, they are only seeking compensation for lost wages, los of use, and loss of quiet enjoyment from the Landlord.

Both parties submitted documentary evidence for my review including but not limited to, videos and photographs, invoices, written statements, copies of email correspondence, the tenancy agreement, and proof of wage loss from the Tenants' employers,

Analysis

Section 32 of the *Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Although the Agent argued that the roof was properly and adequately repaired after the first leak on February 13, 2019, they did not submit any documentary evidence in support of this position. Given the location of the leaks, the conditions under which they occurred, and the fact that roofers were required to repair both leaks, I also do not accept the Agent's argument that the leaks have different causes. As a result, I am satisfied that the second leak on January 13, 2020, was the direct result of the Landlord's failure to properly repair the roof after the first leak on February 13, 2019, as stated by the Tenants, in breach of section 32 of the *Act*.

Further to this, I find that the Landlord also breached their obligations to the Tenants under section 32 of the *Act*, when they failed to make reasonable efforts to contact other roofers in the area when the Landlord's preferred roofer was not immediately available. I do not accept the Agents position that the Landlord was effectively prevented from taking further appropriate action as a result of the weather or their approved list of contractors and while I acknowledge that snowfall occurred on and around the date of the second leak and that this likely impacted the availability of some roofers, I am not satisfied that there were no available roofers in the area who could have safely attended the property to address the leak in a more timely manner. Although the Landlord may choose to regularly utilize one particular contractor or a set of contractors for work, their desire to work with particular vendors and their internal policies for vendor selection and approval does not change their obligations to tenants under the *Act*. As a result, I find that it was incumbent upon the Landlord and the Landlord's agents, to seek alternate companies to investigate and repair the second leak, when the Landlord's preferred contractor was not immediately available. I therefore find that the Landlord's failure to do so constitutes a breach of their obligations to the Tenants under section 32 of the *Act*.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. As I have already found above that the Landlord breached section 32 of the *Act* by first failing to properly and permanently repair the roof after the first leak, and then failing to properly and expediently repair the second leak, I will now turn my mind to the Tenants' claim for monetary compensation.

The Agent for the Landlord argued that the Landlord should not be responsible for the costs incurred by the Tenants as a result of the second roof leak as tenants are required by their tenancy agreements to carry insurance to cover personal losses suffered. While section 7 of the *Act* states that landlords or tenants who claim compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss, I do not interpret this section of the *Act* to mean that landlord's are absolved of financial responsibilities arising as a result of their own negligence and lack of due diligence in repairing an maintaining residential premises rented under the *Act* simply by requiring tenants to carry their own insurance.

I agree that the Tenants were obligated to mitigate their loss as a result of the leak but I find that they did so by staying home to monitor the leak when they were not satisfied that it would be immediately repaired or that an agent for the Landlord could continually attend the rental unit in a timely manner to empty buckets, by waking up frequently throughout the night to empty buckets, and by immediately and frequently contacting the Landlord's agents about the leak. Although the Agent for the Landlord argued that the Tenants should not have stayed home from work and therefore should not be entitled to any wage loss, I disagree. Not only do I find that these actions were required to mitigate damage to their own personal possessions, but I also find that it was of extreme benefit to the Landlord in that it prevented further damage to the Tenant's rental unit, the rental unit below and the building in general.

Although the Agents position is that $350.00 is sufficient compensation for any loss suffered, I do not agree. Based on the Tenant's testimony in the hearing and the documentary evidence submitted regarding their wage loss, I am satisfied that the Tenants suffered lost wages, as well as a significant loss of use, and loss of quiet enjoyment of approximately 50% of the rental unit, including the only bathroom, for a period of 9 days as a result of the Landlord's breach of section 32 of the *Act*. I therefore grant the Tenants' Application for $1,000.00 in monetary compensation.

As the Tenants were successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72 (1) of the *Act*. Pursuant to sections 67 and 72 (2) (a), the Tenants are therefore entitled to deduct $1,100.00 from the next months rent payable under the tenancy agreement, or to recover this amount from the Landlord by way of the attached Monetary Order.

Pursuant to section 62 (3) of the *Act*, I also order the Landlord to have the affected carpets in the rental unit professionally cleaned within 30 days of the date of this decision.

Conclusion

I grant the Tenants' Application seeking monetary compensation in the amount of $1,000.00 and recovery of the $100.00 filing fee. The Landlord is also ordered to have the affected carpets in the rental unit professionally cleaned within 30 days of the date of this decision.

Pursuant to sections 67 and 72 (2) (a) of the *Act*, the Tenants are authorised to deduct **$1,100.00** from the next month's rent payable under the tenancy agreement or to otherwise recover this amount from the Landlord.

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*.

Although the date of this decision is more than 30 calendar days after the date of the hearing, I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) when read in conjunction with section 25.5 of the *Interpretation Act*. In any event, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, not is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Dated: August 10, 2020

Residential Tenancy Branch