

DECISION

Dispute Codes: MNDC, OLC, RP

Introduction

This hearing was convened in response to the tenant's amended Application for Dispute Resolution, in which the tenant has made application for compensation for damage or loss under the Act, Regulation or Tenancy Agreement inclusive of an application of compensation for loss of tenant's right to quiet enjoyment, for the landlord to comply with the Act, and for the landlord to make repairs to the rental unit.

Both parties were present at the hearing. Evidence was reviewed and the parties were provided with the opportunity to provide documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed / sworn oral testimony, to ask each other questions and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for loss of quiet enjoyment and for other monetary amounts claimed?

Should the landlord be Ordered to make repairs to the rental unit?

Should the landlord be Ordered to comply with the Act, regulation?

Background and Evidence

The tenant claims compensation for costs, and loss of quiet enjoyment. The claim includes the following:

Harassment / aggravated damages	1000.00
Rent abatement / rent reduction \$150 x 9 months	1350.00
Tenant completion of condition inspection report form.	25.00
1 tarp	13.43
<i>Additional storage costs</i>	73.17

Tenant sleeping on floor from Nov. 30 – December 08, 2009 @ \$15/day	105.00
Cleaning of oven, dishwasher, refrigerator, kitchen cupboards at outset of tenancy @ 4 X \$25	100.00
Total	2606.60

In addition, the tenant seeks repairs to the unit. The tenant testified that in her opinion an outside ground level drain - having water inside it – needs to be cleaned. The tenant acknowledges that their claim for repairs of caulking to a bathroom sink have been completed / repaired.

The undisputed affirmed testimony in this matter is as follows. The tenancy began December 01, 2009 on a month to month basis. The rental unit is the basement suite of the landlord's home. Rent is payable at \$925 per month. At the outset of the tenancy the landlord collected a security deposit of \$462.50. The landlord and tenant did not perform a move in inspection and the requisite report. The landlord determined that an inspection or inspection report was not required. The tenant consequently determined to do her own inspection report and has submitted it into evidence.

The contrasting affirmed testimony in this matter is as follows. The tenant claims that on moving into the rental unit the oven, dishwasher, refrigerator and kitchen cupboards required cleaning. The landlord disagrees, saying the previous tenant left the rental unit clean. The tenant claims \$100 for cleaning costs.

The tenant claims that the landlord did not complete some painting in the suite along with some repairs until a week into the tenancy, which prevented her from moving her belongings into the suite – and for which she claims she incurred additional storage costs of \$73.17. Further, the tenant claims that for the same reasons, she was forced to sleep on the living room floor for the same period of time for which she claims \$15 per night or \$105. The landlord disputes that the tenant could not move all of her belongings at the outset of the tenancy, and that the tenant unnecessarily chose to move her belongings in at a later time – that the planned painting and minor repairs were accomplishable, regardless of any belongings in the suite.

The tenant testified that the landlord allegedly damaged the tenant's tarpaulin by melting a section of it, and for which the tenant claims the replacement cost of \$13.43. The tenant did not testify as to how the landlord may have damaged the tarpaulin or that she witnessed the landlord in the process of damaging the tarpaulin, however wrote the

landlord a letter six (6) weeks later demanding the landlord pay for its replacement. The landlord denies damaging the tenant's tarpaulin.

The tenant testified that on July 18, 2010, while conversing with the landlord, the landlord made verbal threats of eviction – the tenant claims, at least five times. The conversation lasted some 20 minutes. The conversation followed a prior complaint by the tenant on July 01, 2010, of noise emanating from the landlord's suite - the landlord's walking on alleged bare floors, and from movement of furniture, such as chairs. The tenant claims the landlord engaged in "extreme verbal harassment". She claims the landlord stated they needed the suite for family use, and suggested that she move if she found the noise from upstairs disturbing, as that nothing would change from their end. The tenant claims \$1000 for harassment and aggravated damages resulting from this verbal exchange. The tenant further claims compensation for loss of quiet enjoyment as a result of the alleged noise from the landlord's suite in the amount of \$150 per month, retroactive to the beginning of the tenancy December eight months earlier. The landlord testified that eight months elapsed before the tenant's letter complaining of noise. The landlord claims that nothing had changed after eight months and that the mixed flooring of carpeting and hardwood and area rugs had not changed. The landlord claims that they produce modest "regular family noise" and that they are cognoscente of having a tenant beneath them. The landlord testified the tenant knew she was renting a basement suite, with a family residing above them. Despite their denial of gratuitous noise, after the tenant complained the landlord claims they replaced the existing chair feet felt pads with new ones, spoke to their children to play more quietly, and themselves took extra precautions not to engage in any unnecessary noise – none of which curbed the tenant's complaint. The landlord does not deny that on July 18, 2010 the conversation escalated due to frustration on both sides, but that they made no threats of eviction, although suggesting that the tenancy was no longer a good fit for the tenant – given that there was nothing left for the landlord to do to eliminate all noise emanating from their upstairs suite. The landlord submitted a signed letter from the previous tenant of five years, which states that during the five years they had no complaints regarding noise from the landlord and that they vacated for reasons other than any concerns with the rental unit. The letter states that they, "were never disturbed or awoken by noise from upstairs". The landlord testified that there was nothing different regarding the flooring or substrate during the previous tenancy, and that they had the same number of children.

The landlord further testified that the outside ground level drain, which the tenant alleged required cleaning, does not require cleaning, is functioning properly and that a degree of water in the outside ground level drain is a normal feature of a drain, and that it reflects proper operation.

Analysis

On preponderance of the evidence, and on the balance of probabilities; and, despite the vast contrast in testimony, I have reached a decision.

Such as in this matter, when making a claim for damages or loss under a tenancy agreement or the Act, the party making the claim or allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual damage or loss claimed and proof that the applicant party took all reasonable measures to mitigate their loss.

The tenant has not provided supporting evidence to suggest that the aforementioned appliances and kitchen cupboards were sufficiently dirty to require additional cleaning by the tenant. However, in light of the lack of a move-in inspection by the parties, on the balance of probabilities I grant the tenant the total of **\$100** for additional cleaning at the outset of the tenancy. I do not accept the tenant's claim of \$25 for their labour to complete the move in inspection report. Although it is the landlord's duty to complete the report, and the tenant's report may eventually be useful to the parties in administering the security deposit at the end of the tenancy, the act does not provide for either party to be compensated for its completion. I **dismiss** this portion of the tenant's claim, without leave to reapply.

The tenant has not proven their claim that the landlord is responsible for the damage to their tarpaulin. I **dismiss** this portion of the tenant's claim, without leave to reapply.

The tenant has not proven their claim that it was necessary for them to maintain their belongings in storage for the first week of the tenancy; and as a result, that they were required to sleep on the living room floor. I **dismiss** these portions of the tenant's claim, without leave to reapply.

I accept the testimony of the tenant and the landlord in finding that the tenant has not proven the need for repairs to a bathroom sink. I prefer the testimony of the landlord in finding there is no evidence to support that the status of the outside ground level drain should be altered. Therefore, I **dismiss** the tenants claim for these repairs to the rental unit, without leave to reapply.

In respect to the tenant's assertions of noise from the landlord's upstairs suite, and that it is ongoing and bothersome, and formulates a breach of the tenant's right to quiet enjoyment - I find I **prefer** the landlord's testimony and evidence that noise from the

landlord's suite may sometimes be audible, but it is not unreasonably intrusive or result of negligence on the part of the landlord. I accept that the landlord has taken steps to minimize intrusions to the tenant and that the landlord did not receive complaints of noise for five years before the applicant moved in, or for eight months since the applicant moved in. As a result, I **dismiss** the tenant's claim for rent abatement / compensation for loss of quiet enjoyment on this basis.

In respect to the tenant's assertions of harassment and their claim for aggravated damages as a result, I find the tenant has not met their burden of proving that on July 18, 2010, the landlord engaged in what they have termed, "extreme verbal harassment". As well, while a single episode of heated discourse may, in itself, be disturbing to all participants and possibly regrettable, it does not form the basis of harassment – which typically reflects the element of ongoing or repeated conduct by the 'harasser', known or ought reasonably to be known to be unwelcome. As a result, I **dismiss** the tenant's claim for aggravated damages for loss of quiet enjoyment on the basis of harassment, without leave to reapply.

In respect to all the above, while it goes without mentioning that both parties should always comply with the Act, Regulation and Tenancy Agreement, I find no basis upon which to make an Order for the landlord to Comply with the Act, Regulation or Tenancy Agreement.

Therefore, I **find**, as provided by section 67 of the Act, that the tenant is entitled to compensation for damages and loss in the sum of **\$100**.

Conclusion

I find that the tenant has established a monetary claim in the amount of **\$100**, in compensation for damages and loss. I **Order** the tenant may deduct this amount from future rent.

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*.