

DECISION

Dispute Codes: *MNSD, MND, MNR, OPR, FF, CNR,*

Introduction

This hearing dealt with applications by both the Landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for loss of income, cost of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. The tenant applied to cancel the notice to end tenancy, for compensation, for the return of the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant stated that she had already moved out on November 29, 2011 and had given the keys to the president of the strata council, as she was unable to get a hold of the landlord to hand over and do the final inspection. Since the tenancy has ended, the tenant's application to cancel the notice to end tenancy and the landlord's application for an order of possession are no longer relevant. Therefore, this hearing only dealt with the applications for monetary orders for loss of income and repairs by the landlord and for compensation and the recovery of the filing fee by the tenant.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, cost of repairs and the filing fee? Is the landlord entitled to retain the security deposit? Is the tenant entitled to compensation and the recovery of the filing fee?

Background and Evidence

The tenancy started on December 01, 2009 for a fixed term of eighteen months. At the end of the term, the tenancy continued on a month to month basis. The monthly rent was \$1,350.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$675.00.

Through the tenancy, the parties communicated primarily by email. On October 30, 2011, the tenant informed the landlord by email, that she would be ending the tenancy on November 30, 2011 and attached a copy of the notice to end tenancy to her email. She also informed the landlord that a paper copy would be sent in the mail. The landlord replied to the email on October 31, 2011 and referred to issues with water pooling on the washroom floor.

On November 01, the tenant paid rent with agreed upon deductions for ongoing construction work and also deducted the security deposit off the rent. The landlord served her with a notice to end tenancy for non payment of \$842.60. After making some inquiries at the Residential Tenancy Branch Office, the tenant paid this balance on November 22, 2011.

The landlord testified that he visited the rental unit in July 2011 to address the tenant's concern about the pooling of water in the washroom. The landlord stated that the water appeared soapy and was a result of the tenant failing to properly use the shower curtain. The tenant stated that she had reported the problem to the landlord in an email dated December 14, but he came to check it out in July 2011. She stated that the apartment is 22 years old and there is some leakage of water causing the drywall on the side of the tub to take on water.

The landlord stated that he estimates that it will cost him \$1,800.00 to fix the problem and since the problem was caused by the tenants, they should be paying for the cost of repair. The landlord did not file any evidence to support the quantum of this claim.

During the hearing, the ongoing construction work and the loss of use of the balcony and fireplace were discussed at length. The tenant stated that she was not given any notice of the start date of the work, but fortunately for her she was home on maternity leave the day the work started and therefore she was able to prevent damage to some of her personal belongings.

The tenant also stated that the agreed upon deduction for loss of privacy and quiet enjoyment was not given to her for the month of November in the amount of \$167.40. The tenant stated that once the construction work started, the gas fireplace stopped working. She informed the landlord by email on September 07, 2011 and its use was restored on October 04, 2011.

The landlord is claiming the following:

1.	Rent for December 2011 and January 2012	\$2,700.00
3.	Time spent compiling documents	\$600.00
4.	Lost personal income	\$5,000.00
5.	Process service fee	\$117.60
6.	Filing fee	\$100.00
	Total	\$10,317.60

The tenant is claiming the following:

1.	Damage Deposit	\$675
3.	Repair of dry wall	\$75.00
4.	Compensation pursuant to section 51	\$1,350.00
5.	Agreed upon rent deduction for November	\$167.40
6.	Additional \$32.60 per month for loss of services	\$97.80
7.	Lack of notice of start of work	\$100.00
8.	Stress and suffering during construction	\$200.00
9.	Mailing costs	\$30.54
10.	Loss of income to attend hearing	\$26.50
11.	Preparing evidence for hearing	\$325.92
12.	Filing fee	\$50.00
	Total	\$3,177.66

Analysis

Landlord's application

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the tenant's evidence in respect of the claim. In this case the tenant informed the landlord via email on October 30 that the tenant was ending. The landlord replied to the email thereby acknowledging that he had received the notice. Therefore I find that the tenant gave adequate notice and since the landlord stated in his documentary evidence that he has a tenant for December 01, he will probably not suffer a loss of income. Accordingly, the landlord is not entitled to the loss of income he is claiming for the months of December 2011 and January 2012.

The landlord was advised of the problem of water pooling in the bathroom in December 2010 but did not take immediate action. Given that the rental unit is 22 years old I find

that the problem could be due to a number of factors, including normal wear and tear. In addition the landlord has estimated the cost of repair to be \$1,800.00, has not yet incurred the cost of repair and has not filed any documentary evidence to support the quantum of his claim. Therefore the landlord's claim for \$1,800.00 is dismissed.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for time spent to compile documents, lost personal income and process service fee is dismissed. The landlord has not proven his claim and therefore must bear the cost of filing his application.

Tenant's application:

Since the tenancy is ended, the landlord must return the security deposit. However, the landlord is still entitled to make application for a monetary order for damages.

As stated above, the legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the portions of the tenant's claim for loss of income, mailing costs, and preparing evidence are dismissed.

Both parties agreed that the tenant repaired the dry wall. The tenant has not claimed the cost of labor and therefore I find that the tenant's claim in the amount of \$75.00 for materials only, is reasonable and accordingly I award the tenant this amount.

The tenant did not receive a notice to end tenancy for landlord use of property and therefore is not entitled to compensation pursuant to section 51. Accordingly, the tenant's claim for \$1,350.00 is dismissed.

The tenant is entitled to the agreed upon deduction of \$167.40 for November.

The tenant lost the use of the fire place for approximately one month. Therefore I find it appropriate to award the tenant \$32.60 for one month only.

The tenant was not notified of the start date of the construction work until one week after it started. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the tenant \$50.00 as a minimal award for the lack of notice.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for

occupancy. Such interference might include intentionally removing or restricting services to the tenant.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Based on the testimony of both parties, I find that the tenant may have been inconvenienced while the work was on going, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Accordingly, I find that the tenant has not proven her case for compensation for stress and suffering during the construction and therefore her claim for \$200.00 is dismissed.

The tenant has proven a large portion of her claim and is therefore entitled to the recovery of the filing fee.

Overall the tenant has established the following claim:

1.	Damage Deposit	\$675
3.	Repair of dry wall	\$75.00
4.	Compensation pursuant to section 51	\$0.00
5.	Agreed upon rent deduction for November	\$167.40
6.	Additional \$32.60 per month for loss of services	\$32.60
7.	Lack of notice of start of work	\$50.00
8.	Stress and suffering during construction	\$0.00
9.	Mailing costs	\$0.00
10.	Loss of income to attend hearing	\$0.00
11.	Preparing evidence for hearing	\$0.00
12.	Filing fee	\$50.00
	Total	\$1,050.00

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,050.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$1,050.00**. The landlord's claim is dismissed in its entirety.

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: December 02, 2011.

Residential Tenancy Branch