



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application from the tenant under the *Residential Tenancy Act* (the *Act*). The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Preliminary Matters –Interim Decision re Adjournment of Initial Hearing

Both parties attended both hearings and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. After the completion of the May 8, 2013 hearing (the initial hearing), I issued an Interim Decision on May 15, 2013, in which I outlined my reasons for granting an adjournment of the tenant's application for dispute resolution. Although I was able to proceed with a hearing of a cross-application from the landlord at the original hearing (RTB File # 804990) and issue a final and binding decision regarding the landlord's application, I was unwilling to hear the tenant's application at the initial hearing due to my concerns that the timing of this application and delays in serving evidence to one another compromised the parties' ability to obtain a fair hearing of the tenant's application.

The hearing continued on June 13, 2013 (the reconvened hearing) after both parties were notified of this hearing and the basis for my adjournment of the initial hearing in my Interim Decision. In this decision, I will not revisit the service problems that prompted me to adjourn the initial hearing. These were outlined in detail in my Interim Decision. Both parties confirmed that they received copies of my Interim Decision, were notified of the reconvened hearing time and date, and were prepared to proceed with a hearing of the tenant's application. They also confirmed that they understood that this was a consideration of the tenant's application and had no bearing on my final and binding decision of May 14, 2013, with respect to the landlord's application.

Both parties also confirmed that they had received the written instructions in my Interim Decision that I was not prepared to consider further written representations between the period when my Interim Decision was issued and the date of the reconvened hearing, due to the unusual reasons that prompted my decision to grant an adjournment at the initial hearing. Despite receiving these instructions, both parties submitted written representations in advance of the reconvened hearing. As noted at the reconvened hearing, I have not taken these representations into account in rendering my decision on the tenant's application, although the issues raised in those representations would have had no bearing on this decision.

At the initial hearing, the tenant confirmed that the landlord handed him a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on November 14, 2012. The parties confirmed that this tenancy ended on the basis of the effective date identified in the 2 Month Notice, February 1, 2013.

At the initial hearing, the tenant testified that he delivered a copy of his dispute resolution hearing package and written and digital evidence package to the mailbox at the mailing address provided to him by the landlord on April 29, 2013. The landlord said that she did not receive the tenant's hearing and evidence packages, containing a copy of the tenant's application for dispute resolution, until May 6, 2013, two days before this scheduled hearing. At the initial hearing, the landlord testified that she had reviewed the tenant's dispute resolution and written evidence packages, but had not reviewed the tenant's digital evidence. At the reconvened hearing, both parties confirmed that they had been afforded ample opportunity to review one another's evidence packages and the tenant's application. I am satisfied that the dispute resolution hearing package and the written evidence packages have been served in accordance with the *Act*.

The matter of the return of the security deposit for this tenancy was addressed in the landlord's application. In my decision regarding the landlord's application, I ordered the landlord to retain the tenant's security deposit plus applicable interest to partially offset the monetary award issued in the landlord's favour in that decision. As such, I have not considered the tenant's application to obtain a return of his security deposit as a final and binding decision has already been issued with respect to that portion of the tenant's application.

Issues to be Decided

Is the tenant entitled to a monetary award for damages and losses arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on April 1, 2006. At the expiration of the initial term, the tenancy converted to a periodic tenancy.

At the reconvened hearing, I heard conflicting accounts as to the monthly rent for this tenancy. The tenant testified that his monthly rent was set at \$1,990.25, less \$200.00 for utilities until September 1, 2012, when his rent increased to \$2,065.25 less \$200.00 for utilities for the remainder of the tenancy. As the utility charge formed the basis for much of the landlord's application for dispute resolution and was the subject of a final and binding decision in my consideration of the landlord's application, the matter before me by the time of the reconvened hearing was solely the base monthly rent (i.e., excluding utilities).

The landlord initially disputed the tenant's monthly rent figures, testifying that the tenant's rent increased to \$1,790.25 as of September 1, 2012. However, after the tenant referred to specific rent receipts issued by the landlord from September 2012 until the end of this tenancy, the landlord changed her sworn testimony to confirm that the tenant was indeed correct in his claim that his base monthly rent increased to \$1,865.25 as of September 1, 2012, through the remainder of his tenancy. Since the tenancy ended on the basis of the landlord's 2 Month Notice, the parties agreed that the landlord did not charge any rent for January 2013, the last month of this tenancy.

As noted above, there is no longer a security deposit for this tenancy, as per my May 14, 2013 decision with respect to the landlord's application.

The tenant applied for a monetary award of \$5,776.91. He maintained that he suffered an extensive loss in the value of his tenancy as a result of ongoing roof leaks which damaged his personal possessions and restricted his ability to rent out a portion of his 3-bedroom rental unit to other tenants. He testified that he had to keep moving his belongings from bedroom to bedroom in order to avoid further damage to his possessions. He testified that the landlord did not take prompt or effective action to remedy the roof leakage problem. He also testified that the landlord was well aware that his rental unit was an illegal suit. He said that he had few options with respect to forcing the landlord to comply with his repair requests if he wished to continue his tenancy.

The tenant provided the following itemized breakdown of the monetary award he was seeking in his application:

Item	Amount
Replacement of Damaged Bed Frame	\$229.00
Disposal of Damaged Bed to Dump	50.00
Delivery of New Bed	59.00
Assembly of Bed	65.00
Mattress Cleaning	200.00
Carpet Cleaning	50.00
Repair or Replacement of Vintage Wooden Table	350.00
Replacement of Unique Dresser Unit	75.00
Labour for Moving Furniture, Packing and Unpacking, Checking for Damage, Meeting with Tradespeople, etc.,)	330.00
Rent and Utilities Reduction July and August 2012 ($\$1,990.25 / 3 = \663.42×2 months = \$1,326.83)	1,326.83
Rent and Utilities Reduction September 2012 to January 2013 ($\$2,065.25 / 3 = \688.40×5 months = \$3,442.08))	3,442.08
Less 2 months Utilities ($\$200.00 \times 2$ months = \$400.00)	-400.00
Total Monetary Order Requested	\$5,776.91

During the reconvened hearing, the tenant reduced some of the above claim. He did so as he recognized that my previous decision regarding the landlord's application had taken into account some of the items listed in his original application for dispute resolution. For example, my May 14, 2013 decision reflected the landlord's agreement to compensate the tenant \$525.28 for work the tenant had performed at the rental property during this tenancy. The tenant had provided the landlord with an invoice on November 25, 2012 "for moving furniture, cleaning, placing tarps on damaged sections of the rental property, and for a replacement bed damaged by a leak in the ceiling of the rental unit." As was noted in my May 14, 2013 decision, the landlord had agreed during the tenancy to allow the tenant to deduct \$525.28 from the tenant's rent, but this did not occur during the course of this tenancy. As the tenant has already been compensated in the amount of \$525.28, the tenant lowered his requested monetary award by this figure, resulting in a revised requested monetary award of \$5,251.63.

At the reconvened hearing, the parties provided conflicting testimony as to the extent of the leakage problem in this 3 bedroom rental unit and the amount of disruption caused

to the tenant. The tenant testified that there was damage caused by roof leaks in April 2012, requiring repairs by the landlord. He said that he did not start taking this matter very seriously until July 2012, when more damage to his belongings occurred. He provided oral, written, photographic and video evidence of water leaking into light fixtures, pots set up throughout the rental unit to catch leaks, and damage to his possessions. In response to his persistent requests to have these repairs professionally tended to and to obtain professional disaster restoration services to explore potential mould problems, the tenant testified that the landlord provided ad hoc approaches, primarily the retention of a carpet cleaning company. He testified that the problem became much worse in November 2012, when the roof leaked extensively, requiring the landlord to bring her roofing contractor back to the property.

The tenant testified that he was unable to rent bedrooms to sub-tenants because he did not know when or more importantly where the next set of leaks would occur. He testified that he did have a second tenant in the rental unit some months, and provided some sworn oral testimony as to payments of \$550.00 he received from two tenants who rented out the second bedroom for different periods of this tenancy, including the final three months of this tenancy. However, he said that he was never able to secure a tenant for the third bedroom because of the landlord's failure to undertake effective repairs to prevent further leaking. The tenant applied for a monetary award equivalent to a rent and utility reduction of one-third to reflect the loss in value of his tenancy due to the leakage problems that prevented him from finding a tenant for the third bedroom in the rental unit.

The landlord testified that the Residential Tenancy Agreement (the Agreement) did not allow the tenant to sublet the premises or add tenants to the rental unit. However, she acknowledged that the tenant had approached her with a request to permit him to add tenants to assist him in his monthly rent payments. She confirmed that she had given her oral agreement to the tenant to allow additional occupants of the bedrooms in the rental unit.

The landlord testified that she had conducted repairs to the roof as required and had incurred considerable repair costs. She said that she paid \$500.00 in April 2012, when the tenant first raised concerns about leaks in the roof. She said that she had patches and painting done at that time to repair damage to the rental unit. The landlord testified that these repairs were sufficient until a downpour in November 2012, where she called the roofer in immediately to assess the situation.

The parties agreed that the roofing contractor could not work on the roof while it was raining, so placed three tarps across the roof to protect the rental property in the interim.

The tenant described the tarps used by the roofer as “ratty” and claimed that they were piecemeal solutions nailed onto the roof. The tenant testified that this temporary fix only magnified the problem as the tarps were not large enough to effectively protect the whole roof. The landlord, her husband who was able to inspect the roofer’s work, and the roofing contractor all testified that the roofer placed three layers of tarps across the full area of the roof. The landlord testified that whenever the tenant called her regarding new leaks, she sent the roofer back to reposition the tarps or to ensure that all that could be done to remedy the situation had been undertake.

The roofer testified that only one of the tarps he placed on the roof was 1,000 square feet, while the others varied in size. He said that the smallest of the tarps was 600 square feet. He estimated the surface area of the roof at approximately 1,000 feet. He testified that every inch of the roof had three tarps covering it at all times. The parties agreed that the roof was repaired in January 2013, after which time no further leaks were reported.

The landlord testified that she was only aware of three or perhaps four occasions when there were leaks from the roof into the rental unit. She said that she disagreed with the tenant’s claim that there were five or ten leaks into the rental unit over the time he resided there. The landlord confirmed that the rental unit was not in compliance with municipal regulations. She testified that the porch was illegally enclosed.

Analysis- Tenant's Application for Damage Arising out of this Tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although the parties agreed that the leakage problem with the roof caused some damage, the parties disagreed on the extent and frequency of the incidents that led to the tenant's claim.

I first note that the tenant has been compensated by way of an agreement the parties entered into in November 2012 for some of the tenant’s labour expenses and losses to his bed. As noted earlier, this led to a \$525.28 reduction in the monetary Order issued

to the landlord on May 14, 2013, with respect to the landlord's application for a monetary award.

While the tenant applied for a monetary award in excess of the \$525.28 for items included in the May 14, 2013 monetary Order, the tenant has not supplied any receipts or invoices to demonstrate that he has actually incurred losses beyond those incorporated in my previous decision and Order. When questioned on this matter, the tenant said that he had no bills demonstrating losses for dump fees, carpet cleaning, furniture assembly fees or any of the other items incorporated in his claim for a monetary award. He testified that he ended up selling the furniture damaged by the roof leaks. He provided no receipts or professional estimates for the original value of this furniture prior to the leaks, nor a sales receipt. In the absence of any receipts or invoices, I dismiss all portions of the tenant's application with the exception of the amounts already awarded to him on May 14, 2013, and for rent reduction and utility reduction without leave to reapply. I do so as the tenant has not provided sufficient evidence to demonstrate his entitlement to any monetary award beyond that which has already been provided to him for these items in the previous decision.

Analysis – Tenant's Application for a Reduction in Rent due to the Loss in Value of his Tenancy

In turning to the remainder of the tenant's claim, I first note that the tenant's application included a request for a monetary award to enable him to reduce 1/3 of his rent and utilities for January 2013. As the tenant did not pay any rent for January 2013, I dismiss this portion of his application without leave to reapply.

Section 28 of the *Act* reads in part as follows:

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;...

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

Section 32(1) of the *Act* also requires a landlord to keep the rental premises in a state of repair and to maintain the premises in a condition that is suitable for occupation by a tenant. Section 33(1)(c)(i) of the *Act* specifically requires the landlord to undertake emergency repairs to major leaks in the roof when such repairs become necessary.

Section 65(1)(f) of the *Act* allows me to make an Order that past rent must be reduced “by an amount that is equivalent to a reduction in the value of a tenancy agreement” if I am satisfied that the landlord has not complied with the *Act* or the tenancy agreement.

In the written, photographic and video evidence and in the sworn testimony provided by the parties and the landlord’s witnesses, I heard very different accounts as to the extent of the disruption caused by the leakage problems that gave rise to the tenant’s application for a monetary award. The tenant supplied convincing photographs and video footage to demonstrate that on the occasions when these photos and filming occurred the tenant’s rental unit was in fact seriously impacted by the leaks in the ceilings and through the light fixtures. Given that the leaks first started in April 2012, resurfaced in July 2012 and gathered force in a major leak in November 2012, I find that at some stage the landlord was obligated to take action to undertake emergency repairs to address this ongoing leakage problem. The landlord waited until November 2012 and then could not get this work completed until January 2013.

Based on the evidence before me, I find that the tenant has demonstrated entitlement to a rent reduction for a portion of his tenancy due to the landlord’s recurring failure to take adequate steps to eliminate the leaks to the roof of this rental property. In coming to this determination, I accept the tenant’s testimony that he had to repeatedly move his possessions around the changing locations and intensity of the leaks without obtaining satisfactory action from the landlord to address what was clearly a serious emergency situation that impacted his tenancy. I also accept that the tenant would have had difficulty in finding a tenant who would be willing to move into this rental unit, given the changing nature of the leakage problems. I also reject categorically the landlord’s claim that her retention of a professional cleaning company to clean up the premises constituted an adequate response to the tenant’s request that she hire a qualified disaster restoration firm to consider the full extent of the damage caused during the flooding and to take remediative action. In this regard, I find merit to the tenant’s observation that the landlord attempted short term fixes rather than addressing the full magnitude of the leakage problem present in this rental property.

The parties provided inconsistent estimates of the number of times that the leaks occurred. In his written evidence, the tenant referenced “5 separate leak incidents of which there were 10.” At one point in the hearing, the tenant described there being “7 different times since last spring” when there were leakages in the rental unit. The tenant also said that the leaks occurred mainly from September 2012 until November 2012, when he estimated it leaked 8 or 9 times. At the end of the reconvened hearing, the tenant testified that he could not recollect how often it leaked from July until

November 2012. The landlord testified that there were three or four episodes of leakage, claiming that the tenant had exaggerated the frequency of these problems.

The original Agreement signed on March 7, 2006 was signed by the landlord, the tenant and a co-tenant. The landlord provided written evidence and sworn testimony that she agreed to let the tenant add tenants to fill the other two bedrooms once the original co-tenant vacated the rental premises. On this basis, I find that the landlord consented to allow the tenant to reduce his costs by finding at least one other tenant in this rental unit to replace the former co-tenant. However, I find that the tenant has not supplied adequate evidence to demonstrate that the tenant's failure to fill the third bedroom of the rental unit from July 2012 until January 1, 2013 necessarily resulted from the landlord's delays in undertaking effective repairs to the roof and thus avoiding damage to the tenant's rental unit. Other than some general statements about other tenants who stayed in the rental unit from time to time, the tenant did not provide details on the extent to which he advertised for new tenants, nor did he provide any detailed history that would substantiate his assertion that the landlord was responsible for the tenant's failure to obtain rent from a third tenant. For example, there may have been many reasons to explain why the tenant had been unable to obtain rent contributions from two other tenants to assist the tenant with his monthly rent payments.

In considering the tenant's eligibility for a rent reduction, I rely heavily on the tenant's sworn testimony that most of the leaks occurred during the period from September 2012 until November 2012. Prior to September 2012, the landlord took measures in April 2012 and again in July 2012 to repair the roof leaks and damage caused by the leaks. While other leaks also occurred, it would appear that most of the leaks that would have hindered the tenant's ability to rent the premises to others occurred from September 2012 through November 2012.

I find that the tenant's eligibility for a retroactive rent and utility reduction in accordance with section 65(1(f) of the *Act* commenced when the landlord did not take adequate corrective action to prevent a recurrence of leakage problems following the July 2012 leakage incident. For this reason and because the leakage problem did not become a recurring problem until September 2012, I find that the tenant is entitled to a monetary award of \$250.00 for August 2012, the month after the second major leak was reported to the landlord. I find that the tenant is entitled to a monetary award of \$500.00 for the loss in value of this tenancy for each of the three months extending from September 2012 through November 2012, the time frame when the leaks were most prominent. By December 2012, there is again conflicting evidence as to the extent of the leakage problems experienced in this rental unit. By December 2012, I find that the leakage problems had lessened by the work conducted by the roofer. However, as there were

still some leakage problems by that month, I allow the tenant a retroactive rent reduction for a reduction in the value of his tenancy in the amount of \$375.00 for December 2012, the mid-point between the reduction provided for August 2012 and the reductions from September until November 2012.

As the tenant has been partially successful in this application, I allow the tenant to recover \$50.00 of his filing fee from the landlord.

I dismiss the remainder of the tenant's application without leave to reapply as these issues have either been dealt with in the context of the landlord's application or the tenant has failed to provide adequate evidence to demonstrate his entitlement to a monetary award.

Conclusion

I issue a final and binding monetary Order in the tenant's favour under the following terms, which allows the tenant a retroactive rent reduction for the loss in value of his tenancy and to recover part of his filing fee from the landlord.

Item	Amount
Rent Reduction for August 2012	\$250.00
Rent Reduction from September 2012 to November 2012 (3 months @ \$500.00 = \$1,500.00)	1,500.00
Rent Reduction for December 2012	375.00
Partial Recovery of Filing Fee	50.00
Total Monetary Order	\$2,175.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This final and binding 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: June 18, 2013

Residential Tenancy Branch

