



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, RP, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlords attended the hearing. The landlords were represented by their agent (the agent). The landlords elected to call one witness, GB. The tenant attended the hearing. The tenant was assisted by his agent and spouse OG (the occupant OG). The tenant alleged to call one witness, NP. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

No issues regarding service of documents were raised by either party.

Preliminary Issue - Tenant's Amendments

At the hearing the parties informed me that the sale of the residential property to the new owners is complete. The occupant OG informed me that the required repairs were completed by the new owners. The occupant OG asked to amend the tenant's application to withdraw the claim for repairs and to restrict the landlords' access. As

these issues are now moot, there is no prejudice to the landlords in these amendments. The tenant's application is amended as requested.

History of Proceedings

The hearing of the tenant's application spanned three dates: 27 March 2015, 9 June 2015 and 10 August 2015. Two interim decisions were issued: 22 April 2015 and 9 June 2015. This decision should be read in conjunction with those interim decisions.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs to the rental unit? Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 May 2013. Monthly rent is \$820.00.

The occupant OG testified that on 21 January 2015, the tenant's husband noticed that the door lock did not work well. The occupant OG testified that the tenants called the landlord PD on 22 January 2015 to ask that he repair the lock. The occupant OG testified that on 24 January 2015 the landlord PD confirmed that that the lock was hard to open. The occupant OG testified that the landlord PD told her that he would change the whole lock. The lock was not repaired.

The occupant OG testified that on 17 February 2015 she went with her child to retrieve the mail. The occupant OG testified that the mail was approximately five minutes from home. The occupant OG testified that when she returned to the rental unit, she was unable to open her door. The occupant OG testified that she called her husband. The occupant OG testified that the landlords were not called because they had not responded to the earlier issue with the lock. The occupant OG testified that she informed the landlord on 18 February 2015 of the situation regarding the lock and told the landlord that she would provide a receipt.

The tenant testified that the back steps to the rental unit were unusable. The tenant testified that the former landlord asked the tenant to fix the steps. The tenant testified that the wood was rotten and it was unfixable. The tenant testified that he gave the former landlord a quote of \$1,400.00 for materials. The tenant testified that the former landlord told him that he could have his last month of rent free in compensation. The tenant testified that he gave the receipts for materials to the former landlord.

The agent testified that there was never any agreement between her father and the tenants as to the cost of the deck. The landlord PKG testified that there was never any agreement between her husband and the tenants regarding compensation for the deck.

The occupant OG testified that on 2 October 2014, the landlords contacted the tenant to tell them that the upstairs unit was going to be repainted.

The agent testified that the renovations included repainting, replacing blinds, redoing the flooring in the whole house. The agent testified that the landlords told the tenant that the renovations involved installing new flooring. The agent testified that the renovations occurred for ten days in October for approximately two to three hours per day and that the construction was not continuous. The agent testified that repainting occurred over one or two days in late October or early November. The agent testified that the paint was fumeless paint or environmentally friendly fumes and that the landlords ensured that all the windows were open to allow the residential property to ventilate. The agent testified to sixteen days of work occurring over 4 October 2014 to 23 November 2014. The agent testified that the landlords told the tenants when noise would occur.

The tenant OG testified that renovations occurred on the following days:

- 4 October 2014 to 15 October 2014;
- 24 October 2014 to 26 October 2014;
- 6 November 2014 to 8 November 2014;
- 22 November; and
- 20 December.

The occupant OG testified that they were not given any warning or notice of the renovations. The occupant OG testified that the renovations were very disrupting as the renovations resulted in five to six hours of pounding in a row and did not allow for the occupant OG and her small child to maintain their routine. The occupant OG testified that the renovations involved use of power tools including what she believed to be compressors and nail guns. The occupant OG testified that she and her child would go

to the library or to a park in order for the child to nap. The occupant OG testified that she spent as much time as possible outside with her child.

The occupant OG testified that she spent two days at a friend's home (13 and 14 October 2014) because of the noise. The occupant OG testified that the renovations would occur as early as 1100 and as late as 2100. The occupant OG testified that she was not warned about the painting and that the fumes bothered her. The occupant OG testified that there were paint fumes in the rental unit from 24 October 2014 to 26 October 2014. The occupant OG testified that the fumes entered the rental unit through the ventilation. The occupant OG testified that in order to minimise the fumes, the tenants turned off the heat and opened all of the doors. The occupant OG testified that the landlords promised her a quiet Thanksgiving, but that renovations occurred on 13 October 2014 from 1000 to 1845.

The tenant called one witness, NP. The occupant OG told NP that there was construction in progress. NP testified that she was aware that the occupant OG would wander the mall to not stay in because of the noise. NP testified that a couple of times she called the occupant OG, she was outside the rental unit because her child was unable to sleep because of the noise.

NP testified that she was invited to the rental unit by the tenants for Thanksgiving. NP testified that she arrived at the rental unit at 1700 on 13 October 2014. NP testified that she did not park at the rental unit that day because the parking spots in front of the house were all occupied. NP testified that she did not recall seeing any workers around the residential property. NP testified that there was garbage around the house. NP testified that she was surprised by the amount of noise. NP testified that this noise was coming from upstairs. NP testified that the noise sounded like hammering, banging, knocking and rumbling. NP testified that she offered to take the occupant OG and her child to NP's house so that they could sleep.

The tenant testified that the landlord or realtor knocked on the door on two occasions in the first week of December to show the rental unit. The tenant testified that he permitted entry on the first occasion. On 20 December 2014, the tenant asked the realtor to provide the tenants with written notices of entry. The tenant testified that two or three of the notices to enter were delivered personally. The tenant testified that the remaining notices were posted to the door or slid underneath the door. The tenant testified that the tenants were home for all entries except for one. The occupant OG testified that she was surprised that the showing of 24 January 2015 was an open house. The occupant OG testified that there were never any opportunities to

reschedule viewings or do anything about it. The occupant OG testified that she felt like she did not have any power in her own home.

The tenant testified that the prospective purchasers would take pictures of the rental unit and pictures of his son. The tenant testified that the purchasers would open closet doors and drawers. The tenant provided me with a calendar that documents between 15 and 20 entries for the purposes of real estate viewings.

The agent agreed with the tenants' calendar that set out the dates of real estate showings. The agent testified that the tenants would not allow prospective purchasers to open closets to examine the space or open blinds to allow natural light into the rental unit. The agent submitted that prospective purchasers have a right to look in closets. The agent testified that the tenant would "breathe down the necks" of prospective purchasers. The agent submitted that the tenants are overly sensitive. The agent testified that the tenants would point out flaws in the house and made it difficult to sell the house. The agent testified that to the best of her knowledge of any prospective purchaser touching the personal belongings of the tenant and in particular had no knowledge of any prospective purchaser smelling the occupant OG's dress.

NP testified that she was invited to celebrate the tenant's birthday at the rental unit. NP testified that the birthday lunch had to be rescheduled due to a real estate showing.

The landlords called one witness, GB. GB testified that prospective purchasers were always supervised by someone from the real estate team. GB testified that the suite was shown between 15 and 20 times. GB testified that one or two viewings were cancelled. GB testified that prospective purchasers did not touch the tenants' personal belongings. GB testified that prospective purchasers opened kitchen cupboards and the pantry. GB testified that no prospective purchaser smelled the tenants' clothing; however, GB testified that it was another employee that attended at the rental unit on the date of the alleged clothing-smelling incident.

The tenant claims for \$1,643.00:

Item	Amount
Loss of Quiet Enjoyment Renovations	\$205.00
Loss of Quiet Enjoyment Viewings	492.00
Lock Repair	126.00
Deck	820.00
Total Monetary Order Sought	\$1,643.00

Analysis

Tenant's Application for Cost of Emergency Repairs

The tenant seeks recover of the cost of the lock repair and the deck installation.

Section 33 of the Act describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Installing a deck is not an “emergency repair” within the meaning of the Act.

Accordingly, the tenant is not entitled to recover the cost of these repairs under the Act.

Residential Tenancy Policy Guideline, “1. Landlord & Tenant – Responsibility for Residential Premises” states:

The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.

This Branch only has jurisdiction over tenancy agreements and not any service agreement that parties may enter into. For these reasons, this portion of the tenant’s claim is dismissed.

A damaged lock is a proper emergency repair pursuant to section 33 of the act. Subsection 33(3) of the Act sets out the steps a tenant must take before undertaking emergency repairs:

A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The occupant OG admits that neither she nor the tenant attempted to call the landlord regarding the lock issue. The occupant OG testified that this is because they did not feel like the landlord responded to the earlier complaint about the lock sticking. There is no discretion to avoid the requirements of the Act: the tenant must make at least two attempts to contact the landlord. As the tenant did not attempt to contact the landlord, he is not entitled to recover the cost of the emergency lock repairs. This portion of the tenant's claim is dismissed without leave to reapply.

Tenant's Claim for Loss of Quiet Enjoyment

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline, "6. Right to Quiet Enjoyment" (Guideline 6) provides greater direction on the tenant's right to quiet enjoyment:

Frequent and ongoing interference by the landlord, ... may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: -

- entering the rental premises frequently...;
- unreasonable and ongoing noise;...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations. ...

[footnotes omitted; emphasis added]

The parties agree that between 16 and 20 days of renovation work occurred. The tenant, NP and occupant OG testified that the renovation noise was very loud. The tenant provided me with a video recording in which audible banging is heard. I accept

that the renovations were made more difficult because of the age of the tenant's child. I find that the period of renovations from 4 October 2014 to 15 October 2014 amounted to a breach of the tenant's right to quiet enjoyment. These renovations were of such duration that it could not be said to be temporary inconvenience. While the paint fumes were likely unpleasant, I do not agree that this intrusion amounts to a breach of the tenant's right to quiet enjoyment. The other dates of the renovations were intermittent. I find that the intermittent dates are not compensable as they were a temporary inconvenience. I find that the tenant has established a breach of his right to quiet enjoyment for the period 4 October 2014 to 15 October 2014. I accept the tenant's estimate that the breach amounted to devaluation in the tenancy of 25%. I was not provided with any argument or submission by the landlords with respect to the damages sought. The tenant's daily rent for October was \$26.45. I find that the tenant is entitled to recover \$6.61 (subject to rounding) for each day of the breach of quiet enjoyment. The tenant is entitled to \$79.35.

The tenant seeks compensation for the entries for the purposes of real estate viewings. A landlord is entitled to sell their home, which includes showing the rental unit to prospective buyers; however, this right must be balanced with the tenant's right to quiet enjoyment. In this case, the rental unit was shown approximately 20 times over the course of January and February. The tenant's calendar indicates that there were an increased number of showings in February: as many as three in one week. I find that the increased frequency of entry in February amounted to a breach of the tenant's right to quiet enjoyment. In particular, the tenant was prevented from enjoying the rental unit as his home over the course of February. I find that the tenant has shown insufficient evidence that any person viewing the rental unit touched the occupant OG's clothing. As such, only the entries themselves are compensable. I accept the tenant's estimate that the breach amounted to devaluation in the tenancy of 30%. I was not provided with any argument or submission by the landlords with respect to the damages sought. I find that the tenant has proven that there were eight entries to the rental unit for February. The tenant's daily rent in February was \$29.29. I find that the tenant is entitled to recover \$8.79 (subject to rounding) for each day of the breach of quiet enjoyment. The tenant is entitled to \$70.29.

Filing Fee

As the tenant has been successful in his application, he is entitled to recover his filing fee from the landlords.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$199.65 under the following terms:

Item	Amount
Loss of Quiet Enjoyment – Renovations	\$79.36
Loss of Quiet Enjoyment – Showings	70.29
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$199.65

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: September 3, 2015

Residential Tenancy Branch